Court File No. M38119

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

Applicants

MOTION RECORD

(Motion for leave to appeal the order of Newbould J. dated October 13, 2009)

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSUC# 34701O
Tel. 416 601-7856
Fax: 416 868-0673

Lawyers for The Toronto-Dominion Bank

To: **Fraser Milner Casgrain LLP**
P.O. Box 100
1 First Canadian Place
100 King Street West
Toronto, Ontario M5X 1B2

Jane Dietrich
Tel: 416-863-4511
Fax: 416-863-4592

Lawyers for Grant Forest Products Inc., Grant Alberta Inc., Grant Forest Product Sales Inc. and Grant U.S. Holdings GP

And To: **Bennett Jones LLP**
Suite 3400
One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Richard B. Swan
Tel: 416 777-7479
Fax: 416 863-1716

Lawyers for Peter Grant Sr.

AND TO: **Stikeman Elliott LLP**
Commerce Court West
199 Bay Street
Suite 5300
Toronto ON M5L 1B9

Sean F. Dunphy
Tel: 416 869-5662
Fax: 416 947-0866

Lawyers for the Monitor

Index

Court File No. M38119

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

Applicants

MOTION RECORD

(Motion for leave to appeal the order of Newbould J. dated October 13, 2009)

INDEX

TAB 1

Court File No.

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

Applicants

NOTICE OF MOTION
(motion for leave to appeal)

THE TORONTO-DOMINION BANK ("TD") will make a motion which will be heard by the court in writing 36 days after service of TD's motion record, factum and transcripts, if any, or on the filing of TD's reply factum, if any, whichever is earlier (unless otherwise directed by order of a judge of this court).

PROPOSED METHOD OF HEARING: The motion is to be heard in writing (unless otherwise directed by order of a judge of this court).

THE MOTION IS FOR:

1. an order granting leave to appeal the order of the Honourable Justice Newbould dated October 13, 2009;

2. costs of this motion; and

3. such further and other relief as this Honourable Court considers just.

THE GROUNDS FOR THE MOTION ARE:

GFPI and its CCAA proceedings

1. Grant Forest Products Inc. ("GFPI") is in the lumber business. It was founded by and is controlled by the responding party Peter Grant Sr. On June 25, 2009, GFPI filed for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act* (the "CCAA"). The CCAA proceedings are ongoing.

2. At present, the stay of proceedings under the CCAA has been extended to December 1, 2009, primarily in order to allow a process for the marketing of GPFI's assets to be advanced.

Mr. Grant's motion

3. On October 5, 2009, Mr. Grant brought a motion before the Honourable Justice Newbould for an order in connection with an agreement (the "Tax Refund Agreement") under which he purchased from GFPI $20 million U.S. in tax refunds to become due from the Canada Revenue Agency (the "CRA") to GFPI in 2008 and 2009. The Toronto-Dominion Bank ("TD") opposed the motion. TD is agent for a lending syndicate which holds first ranking security over the assets of GFPI.

4. On October 13, 2009, Justice Newbould issued an endorsement granting Mr. Grant the relief that he was seeking. Specifically, Justice Newbould held that:

(a) pursuant to the Tax Refund Agreement, Mr. Grant has acquired full right, title and interest in the tax refunds which are owing by the CRA to GFPI in 2009; and

(b) if GFPI receives a 2009 tax refund, the first $10 million U.S. will be received in trust for Mr. Grant and GFPI will be obliged to pay it forthwith to Mr. Grant.

Justice Newbould's holding

5. In 2008, GFPI was experiencing financial problems. It was proposed the Mr. Grant assist GFPI's cash flow by purchasing certain federal and Ontario tax refunds which GFPI expected to receive in 2008 and 2009.

6. Pursuant to the terms of GPFI's agreements with its lenders, referred to as the first and second lien credit agreements, GPFI was permitted to sell assets outside the ordinary course of business without lender consent and without paying the proceeds to the lenders, but only on the condition that dispositions (as broadly defined in the Credit Agreements) of the Tax Refunds not exceed $10 million U.S. per year. The Tax Refund Agreement was carefully drawn as to comply with this covenant.

7. Pursuant to the Tax Refund Agreement, Mr. Grant paid GFPI $20 million U.S. in March 2008, in exchange for the promise of GFPI to convey $10 million U.S. of GFPI's 2008 tax refund at the 2008 closing and $10 million of its 2009 tax refund to be transferred at the 2009 closing.

8. In order to comply with the covenant in the credit agreements, the Tax Refund Agreement made it clear that the acquisition of GFPI's 2009 tax refund was not to occur until at tranfer of the 2009 tax refund was delivered at the 2009 Closing which as scheduled to occur on

January 2, 2009, and that until the transfer of the 2009 refund was delivered, Mr. Grant had no interest in GFPI's 2009 tax refund:

> "Section 2.01 Agreement of Purchase and Sale
>
> Subject to the provisions of this Agreement, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase from the Vendor: ...
>
> (b) the Sold 2009 refund on January 2, 2009."
>
> "Section 5.02 No Interest of Purchaser in Sold 2009 Refund Until 2009 Closing
>
> The parties agree, notwithstanding any other provision of this Agreement or any other right or purported right of the Purchaser, that *the Purchaser does not acquire any right, title or interest in the Sold 2009 Refund*, and the Vendor does not sell, assign or transfer any right title or interest in the Sold 2009 Refund *until the Vendor delivers to the Purchaser at the 2009 Closing, the transfer referred to in Section 7.04(a)*." [Emphasis added.]

9. The Tax Refund Agreement expressly held that, *once the closing of the purchase of the 2009 tax refunds was completed*, GFPI would hold $10 million U.S. of its 2009 tax refund in trust for Mr. Grant:

> "Section 5.06 Sold 2009 Refund Held in Trust by Vendor
>
> The Vendor shall hold in trust for Purchaser, keep segregated from any other funds, accounts or assets of the Vendor and pay to Purchase any amount of the Sold 2009 Refund received by the Vendor *after the completion of the 2009 Closing*." [Emphasis added.]

"2009 Closing" was defined to mean "the closing of the purchase and sale of the Sold 2009 Refund on January 2, 2009".

10. By December, 2008, GFPI was in serious financial difficulty and anticipated being in default of its borrowing covenants by the end of the first quarter of 2009. In order to secure the

support of its lenders for a restructuring, GFPI decided not to close the sale of the 2009 tax refunds to Mr. Grant.

11. Despite the clear language of the Tax Refund Agreement that a trust did not arise until the 2009 Closing had been completed, and despite the undisputed fact that the 2009 Closing had not occurred, Justice Newbould found that the trust obligation under Section 5.06 was effective. He so found by applying "the principle that equity considers done what ought to be done".. He used that "principle" to treat the 2009 Closing as if it did take place, even though it had not.

12. Justice Newbould's holding has significant implications both for the interpretation of commercial agreements generally and for the interpretation of such agreements within insolvency proceedings:

(a) **Importance for the interpretation of commercial agreements generally.** Is it correct that the equitable principle that equity considers done what ought to be done can override the express and unambiguous language of an agreement entered into by sophisticated commercial parties?

(b) **Importance for insolvency practice.** Were it not for the trust Justice Newbould has recognized, Mr. Grant would be an unsecured creditor of GFPI for $10 million U.S. and would receive the same treatment as all other unsecured creditors. With the trust recognized, Mr. Grant will get 100 cents on the dollar even before GFPI's secured creditors receive anything. This reality gives rise to the following important question for insolvency practice in Ontario: Can a structure like the Tax Refund Agreement be used to elevate the claim of an unsecured creditor to a trust claim guaranteeing recovery of 100 cents on the dollar?

13. In addition to being of significance to insolvency practice in Ontario and to commercial law generally, the issue is of significance to the proceeding itself. At stake is $10 million U.S., which is a considerable sum of money, particularly for an insolvent corporation needing as many resources as possible to attempt to achieve a restructuring.

14. The appeal is *prima facie* meritorious. Justice Newbould's ruling undermines the certainty of commercial agreements and grants a preference to an unsecured creditor. The correctness of this ruling is doubtful and ought to be reviewed by this court.

15. The appeal will not unduly hinder the progress of the proceeding. TD is willing to expedite this motion for leave to appeal, and the appeal itself if leave to appeal is granted. GFPI's current stay of proceedings is in place until December 1, 2009 in order to permit a process for the marketing of GFPI's assets to unfold. Subject to the availability of time in this court, the leave motion and, if leave is granted, the appeal itself can be dealt with prior to December 1, 2009, which means that the proceedings in this court will not interfere in any way with the ongoing restructuring.

16. TD relies on section 14 of the CCAA and Rule 61.03.1 of the *Rules of Civil Procedure*.

17. TD also relies on such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED at the hearing of the motion:

1. the record before Justice Newbould; and

2. such further and other materials as counsel may advise and this Honourable Court may permit.

October 20, 2009

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSUC# 34701O
Tel. 416 601-7856
Fax: 416 868-0673

Lawyers for The Toronto-Dominion Bank

TO: **Fraser Milner Casgrain LLP**
P.O. Box 100
1 First Canadian Place
100 King Street West
Toronto ON M5X 1B2

Jane Dietrich
Tel: 416 863-4511
Fax: 416 863-4592

Lawyers for the Applicants

AND TO:

Bennett Jones LLP
Suite 3400
One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Richard B. Swan
Tel: 416 777-7479
Fax: 416 863-1716

Lawyers for Peter Grant Sr.

AND TO:

Stikeman Elliott LLP
Commerce Court West
199 Bay Street
Suite 5300
Toronto ON M5L 1B9

Sean F. Dunphy/Kathy Mah
Tel: 416 869-5662/ 416 869-5652
Fax: 416 947-0866

Lawyers for the Monitor

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC. et al.

Court File No.

COURT OF APPEAL FOR ONTARIO

NOTICE OF MOTION

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSUC# 34701O
Tel. 416 601-7856
Fax: 416 868-0673

Lawyers for The Toronto-Dominion Bank

#749296 v. 1

TAB 2

Court File No. CV -09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	**TUESDAY, THE 13TH DAY**
	)	
JUSTICE NEWBOULD	)	**OF OCTOBER, 2009**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

Applicants

ORDER

(Motion with respect to the Tax Refund Purchase and Sale Agreement, returnable October 5, 2009)

THIS MOTION, made by Peter J. Grant Sr. ("Mr. Grant") for an order, declaration or directions as appropriate in connection with a Tax Refund Purchase and Sale Agreement ("Tax Refund Agreement"), dated March 31, 2008, as set out in the Notice of Motion of Mr. Grant, was heard on October 5, 2009, at 330 University Avenue, Toronto.

ON READING the Notice of Motion, the Affidavit of Mr. Grant sworn September 8, 2009, and the Affidavit of Benjamin Montgomery sworn September 14, 2009, the Reply Affidavit of Mr. Grant sworn September 18, 2009, and the transcript of the cross-examination of Benjamin Montgomery taken on September 25, 2009, and on hearing the submissions of counsel for Mr. Grant, The Toronto-Dominion Bank in its capacity as Agent under the First Lien Credit

Agreement, the Monitor Ernst & Young Inc. and the Applicants:

1. **THIS COURT DECLARES** that the transfer to Mr. Grant of the 2009 tax refund due to him under s. 5.02 of the Tax Refund Agreement has in equity taken place as of January 2, 2009, and that Mr. Grant has acquired full right, title and interest in the tax refund as of that date. Mr. Grant is entitled if he wishes to receive a transfer from Grant Forest Products Inc. ("GFPI") under s. 5.02 effective January 2, 2009.

2. **THIS COURT DECLARES** that Mr. Grant is also entitled if he wishes to direct the Canada Revenue Agency, the Finance Minister (Ontario Ministry of Finance) or any other appropriate person under s. 5.04 of the Tax Refund Agreement to pay the tax refund due to him directly to him.

3. **THIS COURT DECLARES** that if the 2009 tax refund due to Mr. Grant is received by GFPI, it will be received by GFPI in trust for Mr. Grant and GFPI shall be obliged to forthwith pay it to Mr. Grant.

4. **THIS COURT ORDERS** that Mr. Grant is entitled to his costs from TD, the amount of which shall be subsequently determined by this Court.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

NOV 0 2 2009

PER / PAR: TV

Geoge Argyropoulos

G. Argyropoulos, Registrar
Superior Court of Justice

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC. et al.

Court File No. CV-09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSUC# 34701O
Tel. 416 601-7856
Fax: 416 868-0673

Lawyers for The Toronto-Dominion Bank

#776781

TAB 3

COURT FILE NO.: CV-09-8247-00CL
DATE: 20091013

SUPERIOR COURT OF JUSTICE – ONTARIO
COMMERCIAL LIST

RE: IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

Applicants

BEFORE: Justice Newbould

COUNSEL: Richard B. Swan, for Peter Grant Sr.

Kevin P. McElcheran, for Toronto-Dominion Bank, agent for 1st lien lenders

Katherine Mah, for the Monitor Ernst & Young Inc.

Jane O. Dietrich, for Grant Forest Products Inc., Grant Alberta Inc., Grant Forest Products Sales Inc., and Grant U.S. Holdings GP

DATE HEARD: October 5, 2009

ENDORSEMENT

[1] This is a motion by Peter Grant Sr. for an order, declaration or directions as appropriate in connection with an agreement under which Mr. Grant purchased for US $20 million from Grant Forest Products Inc. ("GFPI") US $10 million worth of income tax refunds due from the Canada Revenue Agency ("CRA") to GFPI in each of 2008 and 2009. His purchase of these expected tax refunds was to assist the cash flow of GFPI. He received the refund for 2008 but has not been provided with the necessary transfer document from GFPI under the agreement in

order to receive the 2009 refund that is expected in the near future. He claims that GFPI is in breach of its agreement in not providing him with the transfer document and that the expected tax refund is to be received by GFPI in trust for him and is not an asset of GFPI.

[2] The Toronto-Dominion Bank ("TD") is the agent for the first lien lenders[1]. It opposes the application on the grounds that while GFPI has admittedly broken the agreement with Mr. Grant by not delivering to Mr. Grant a transfer document for the 2009 tax refund, to require the transfer document to now be given would accord preferential treatment to Mr. Grant over other creditors. TD claims that because the transfer has not been given, the tax refund when received by GFPI will not be an asset received and held in trust for Mr. Grant but will be an asset of the company.

[3] In my view it is clear that Mr. Grant is entitled to the relief he seeks to protect his right to the 2009 tax refund.

Background facts

[4] The Grant family has been in the lumber business in Ontario for several generations, going back to the 1880s. Mr. Grant founded the predecessor to GFPI in 1980, and took the company into the oriented strand board ("OSB") market with the opening of the company's first OSB mill in Englehart, Ontario in 1981. OSB is an alternative to plywood and is commonly used in residential construction. The company grew to become one of the three largest OSB producers in North America. Mr. Grant (and a Grant family trust known as Twin Lakes Trust) are the ultimate shareholders of GFPI.

[5] GFPI and the other applicants filed for and obtained protection under the CCAA by Initial Order of this Court dated June 25, 2009. Ernst & Young Inc. was appointed as Monitor. By order dated July 24, 2009, the initial stay was extended to October 15, 2009.

[6] As GFPI's financial performance began to decline in the OSB market, and particularly after GFPI and affiliates incurred significant bank debt to construct the two new South Carolina OSB mills, Mr. Grant became directly involved in steps to assist GFPI's cash-flow. Apart from

[1] At all material times, TD was the agent for both the first and second lien lenders. Now it is the agent only for the first lien lenders. The second lien lenders have not appeared on this motion or taken any position on it.

not being paid his salary for some time and not receiving preferred dividends of $6 million declared in 2006, and his retirement fund being under funded by $18 million, he has provided cash to GFPI.

[7] In July 2004, Mr. Grant caused a company controlled by him to loan $40 million on an unsecured basis to GFPI, and in October 2004 he caused that company to loan GFPI a further $10 million, again on an unsecured basis. These amounts have not been repaid. On behalf of that company, Mr. Grant signed postponement and subordination agreements subordinating these loans to the first and second lien lenders.

[8] In June 2008 Mr. Grant caused additional funds in the amount of $25 million to be advanced to GFPI. This amount is recorded in GFPI's accounts as a capital contribution.

Tax Refund Agreement

[9] As GFPI's financial performance declined in 2008, it was proposed that Mr. Grant assist the company's cash-flow by purchasing a portion of certain Canadian and Ontario tax refunds which GFPI expected to receive in 2008 and 2009.

[10] The terms of the first and second lien credit agreements permitted asset sales each year by GFPI out of the ordinary course of business, without the consent of the lenders and without the proceeds being paid to the lenders, on certain conditions, one being that the total amount sold each year could not exceed US$10 million. As well, no security could be given by the company. The tax refund agreement was carefully drawn so that it would comply with the requirements of these credit agreements. Whether the lenders agreed to the terms of the agreement is a matter of some debate, but it is clear that the lenders and their solicitors were quite involved in its drafting. It is common ground that the tax refund complied with the credit agreements and thus there was no need for the lien agents to canvass the lending syndicates for any consent. Mr. Montgomery, a vice-president and director of TD, confirmed that on his cross-examination.

[11] The concept was that Mr. Grant would pay US$20 million to GFPI in March 2008 to purchase a portion of GFPI's 2008 and 2009 tax refunds, with the purchased portions of the tax refunds amounting to US$10 million in each of 2008 and 2009. This would assist the company

with its immediate cash-flow but ensure that Mr. Grant would ultimately receive the purchased portions when the 2008 and 2009 tax refunds were paid by the government. The agreement was structured so that while the entire US $20 million was paid in 2008, no more than US $10 million of the tax refund asset was sold in 2008 and the balance sold was to be in 2009.

[12] From Mr. Grant's perspective, the agreement provided that once GFPI received the 2008 and 2009 tax refunds from the government, GFPI would be obliged to hold the portions of the refunds which he had purchased in trust for him and then pay them out to him or as he directed. Whether this trust arrangement was effected for the 2009 tax refund is the central issue on this motion.

[13] The tax refund agreement provided for the sale of the tax refunds in two tranches, the first on March 31, 2008 and the second on January 2, 2009. It provided for the payment of the entire purchase price on March 31, 2008, with the payment for the 2009 tax refund being by way of deposit. The agreement provides:

> Section 2.01 Agreement of Purchase and Sale
>
> Subject to the provisions of this Agreement, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase from the Vendor:
>
> (a) the Sold 2008 Refund on March 31, 2008; and
>
> (b) the Sold 2009 Refund on January 2, 2009
>
> Section 3.02 Payment of Purchase Price
>
> The Purchaser shall pay the purchase prices to the Vendor by certified cheque, bank draft or wire transfer of immediately available funds to an account specified by the Vendor as follows:
>
> (a) The Purchaser shall pay the 2008 Purchase Price to the Vendor on March 31, 2008 at the 2008 Closing; and
>
> (b) The Purchaser shall pay the 2009 Purchase Price Deposit to the Vendor on March 31, 2008 at the 2008 Closing.

[14] The agreement provides that Mr. Grant receives no interest in the 2009 tax refund until the company delivered to him a transfer of the 2009 refund. It provided:

> Section 5.02 <u>No Interest of Purchaser in Sold 2009 Refund Until 2009 Closing</u>
>
> The parties agree, notwithstanding any other provision of this Agreement or any other right or purported right of the Purchaser, that the Purchaser does not acquire any right, title or interest in the Sold 2009 Refund, and the Vendor does not sell, assign or transfer any right, title or interest in the Sold 2009 Refund until the Vendor delivers to the Purchaser at the 2009 Closing, the transfer referred to in Section 7.04(a).
>
> Section 7.04 <u>Deliveries or Payments on 2009 Closing by the Vendor</u>
>
> The Vendor shall deliver or pay to the Purchaser at the 2009 Closing, in form and substance satisfactory to the Purchaser, acting reasonably:
>
> (a) a transfer by the Vendor to the Purchaser of the Sold 2009 Refund.

[15] The provision in section 5.02 that Mr. Grant was not to have any interest in the 2009 tax refund until the company delivered the transfer to him on January 2, 2009 was to make clear that the 2009 tax refund sale could not be considered a disposition in 2008 contrary to the lien credit agreements. Such a provision was said by the TD solicitor who was dealing with the draft agreement to be "critical".

[16] The trust provisions that are relevant to this motion differentiate between the years 2008 and 2009. They provide:

> Section 5.05 <u>Sold 2008 Refund Held in Trust by Vendor</u>
>
> The Vendor shall hold in trust for the Purchaser, keep segregated from any other funds, accounts or assets of the Vendor and pay to the Purchaser any amount of the Sold 2008 Refund received by the Vendor after the completion of the 2008 Closing.
>
> Section 5.06 <u>Sold 2009 Refund Held in Trust by Vendor</u>
>
> The Vendor shall hold in trust for Purchaser, keep segregated from any other funds, accounts or assets of the Vendor and pay to Purchaser any amount of the Sold 2009 Refund received by the Vendor after the completion of the 2009 Closing.

[17] It is to be noted that the trust for 2009 is to attach to the tax refund received by the company from CRA "after the completion of the 2009 Closing". The "2009 Closing" is defined:

> "2009 Closing" means the closing of the purchase and sale of the Sold 2009 Refund on January 2, 2009.

[18] The agreement also provided that on each of the 2008 and 2009 closings, a partial discharge of the security held by the first and second lien agents and a release of any interest they may have in the sold refunds would be provided to Mr. Grant. This would appear to have been a bootstrap measure to give Mr. Grant some comfort. If the tax refunds were to be received by GFPI in trust for Mr. Grant, as was clearly the intent of the agreement, they would not be assets of the company subject to the lenders security. Moreover, the lenders security permitted these asset sales free of the security without the proceeds being paid to the lenders.

[19] Thus scheme of the tax refund agreement was quite straightforward. On January 2, 2009 a transfer was to be delivered to Mr. Grant delivering him his interest in the 2009 tax refund to be received by GFPI up to the amount of US $10 million. When the refund was received by GFPI, it was to be received and held by GFPI in trust for him. It was not to be an asset of GFPI or subject to the security of the company's lenders.

[20] This scheme of the agreement was well-known by TD, the agent for the first and second lien lenders as is evident from an internal TD credit memorandum prepared by Mr. Montgomery on March 28, 2008, three days before the 2008 closing. That memorandum included the following:

> The capital will be injected in a manner that does not require any consents from the lenders.
>
> The proposed structure is summarized as follows:
>
> > i) on [March 31/08] a related company outside our the restricted group which we understand will be a holdco above our Borrower (the "Purchaser") will acquire US$20MM of the Borrower's 2008 and 2009 tax refunds;
> >
> > ii) on [March 31/08] the Borrower will receive US$20MM from the Purchaser consisting of:

a) US$10MM on the sale of a portion of the Borrower's 2008 tax refunds received between Sept 1/08 – Dec 31/08;

b) US$10MM deposit against the sale of a portion of the Borrower's 2009 tax refunds.

iii) on Jan 2/09 the Borrower will sell $10MM of its 2009 tax refund received between Sept 1/09 to Dec 31/09 to the Purchaser (consideration coming from (ii) (b));

iv) the Agent (1st and 2nd lien) will provide the Purchaser with a partial discharge of its security with the respect to: (ii)(a) in March/08, and (ii)(b) in Jan/09;

v) the Purchaser will receive the proceeds of the monetized 2008 tax refunds in late 2008, and the proceeds of the monetized 2009 tax refunds in late 2009; the Borrower may direct CRA to pay the monetized 2008 and 2009 refunds directly to the Purchaser, or alternatively, to the extent the Borrower receives the monetized tax refunds from CRA, the Borrower will agree to hold in trust and segregate the proceeds of the monetized refunds for the Purchaser.

[21] While TD was not a party to the tax refund agreement, it is quite evident that it understood that it would provide a partial discharge of its security in March 2008 and in January 2009.

[22] The argument now made on behalf of TD is that the 2009 closing has not taken place because the company failed to deliver the transfer document it was required to deliver to Mr. Grant on January 2, 2009 and therefore the tax refund once received will not be subject to a trust in favour of Mr. Grant.

Post-agreement events

[23] The 2008 Closing as defined in the tax refund agreement took place on March 31, 2008. At that time Mr. Grant paid to GFPI US$10 million to purchase the 2008 tax refund and at the same time paid a further US$10 million to purchase the 2009 tax refund. The latter amount was paid as a deposit under the section 3.02(b) of the agreement. GFPI had immediate use and benefit of the US$20 million in funds paid to it. In exchange, Mr. Grant received a transfer

acknowledgment and partial discharges from the first and second lien agents in respect of the 2008 refund. Mr. Montgomery of TD said on his cross-examination that the discharges were freely given because the lenders were asked to give them, and that there was no need to canvass the lending syndicates to do so.

[24] Later in 2008, after GFPI received its 2008 tax refund from CRA, Mr. Grant. received from GFPI approximately US$10 million in respect of his purchase of the 2008 tax refund.

[25] The 2009 closing was to take place on January 2, 2009. However GFPI failed to deliver the transfer required under s. 7.04(a). It is common ground that GFPI is in breach of its agreement for failing to do so.

[26] It is quite apparent from the evidence that it was the position of the lenders that influenced the company to take the position that it did, and that the company felt it was between a rock and a hard place. GFPI was running into financial problems and anticipated being in default of its borrowing covenants by the end of the first fiscal quarter for 2009. There is some evidence in an e-mail sent by Mr. Peter Lynch of GFPI to Mr. Grant's solicitors and others, (i) that TD, which was the agent at the time for both the first and second lien lenders, advised that it would not provide discharges of their security without the consent of the requisite number of lenders in each syndicate, which was different from the position taken by TD regarding the 2008 tax refund that the consent of the members of lending syndicate was not required, and (ii) that TD indicated to Mr. Lynch that it would not be supportive of the request for a discharge of its security.

[27] Mr. Montgomery on his cross-examination made it clear that the position of TD was that in order that GFPI would have the support of TD in a restructuring, the US$10 million should not be paid to Mr. Grant. He said on his cross-examination:

> "A. I do know from Bill [O'Connor, a V-P at TD] that this -- that this would have been our position.
> Q. What did Bill tell you in this regard?
> A. That as -- you know, in order to -- in order to continue to support the company and, you know, put a structure in place that would allow it to continue to operate, that the lenders would look for the 10 million to remain in the company --

Q. Okay.
A. -- in order to induce the lenders to continue to fund, or to continue to forebear, I guess, or continue to re -- to restructure the credit facilities to allow it to continue to operate."

[28] When Mr. Montgomery was involved in the drafting of a term sheet for a proposed refinancing of GFPI he made sure that there was included in the term sheet a negative covenant that the 2009 tax refund not be paid to Mr. Grant. He stated in an internal e-mail at TD "if we restructure we would want to make sure that shareholders do not take payment on this "deposit". Mr. Grant never agreed to this.

[29] On June 19, 2009 Mr. Grant's solicitors wrote to GFPI demanding that GFPI deliver the transfer document required for the 2009 tax refund no later than 5:00 p.m. on June 22, 2009. The letter further demanded that the partial discharges and releases from the first and second lien agents be sought by GFPI from the lenders and provided to Mr. Grant no later than 5:00 p.m. on June 22, 2009. The letter stated that if these discharges and releases from the first and second lien agents were not provided, Mr. Grant might waive these conditions that were inserted in the agreement for his benefit. Section 6.03 of the agreement provided that conditions in favour of Mr. Grant could be waived by him in his sole discretion. The obvious reason for the urgency of the letter and for the demand that these documents be delivered by June 22, 2009 was that it was known that GFPI was about to file for protection under the CCAA, which protection was obtained in the Initial Order made on June 25, 2009.

Issues

[30] TD takes the position that under section 5.02 of the tax refund agreement, Mr. Grant did not acquire any right or interest in the 2009 tax refund as that section provided he would not receive such a right until GFPI delivered a transfer document to Mr. Grant at the 2009 closing that was to take place on January 2, 2009. As that transfer was not delivered, the position of TD is that Mr. Grant therefore has not acquired any interest in the 2009 tax refund.

[31] Further, TD takes the position that the trust provision requiring GFPI to hold the 2009 tax refund in trust once received from CRA has not come into force because that section provides for such a trust for a 2009 tax refund that is received after the completion of the 2009 closing. TD

asserts that because the 2009 closing did not take place as there was no delivery of a transfer from GFPI to Mr. Grant, the trust provision does not yet arise. It is common ground that the 2009 tax refund to come from CRA has not yet been received by GFPI.

[32] The position of Mr. Grant is that GFPI has a trust obligation to hold the 2009 tax refund in trust for Mr. Grant and that it cannot rely upon its own failure to deliver a transfer document to Mr. Grant on January 2, 2009 to argue otherwise. Mr. Grant relies upon the equitable doctrine that equity considers done what ought to be done.

[33] Mr. Grant further contends that it is open to a court to now compel GFPI to deliver the transfer document that was to have been delivered on January 2, 2009, thus giving Mr. Grant his right to the 2009 tax refund under section 5.02. He takes the position that delivery of the transfer now by GFPI would mean that once the 2009 tax refund is received from CRA, it will be impressed with a trust in his favour. TD takes the position that making an order requiring GFPI to now deliver a transfer to Mr. Grant would amount to a preference in favour of Mr. Grant over other creditors of GFPI.

Analysis

[34] There is no question but that GFPI has breached its obligation to deliver the transfer to Mr. Grant on January 2, 2009. It is also clear that while TD understood at the outset that the 2009 tax refund when received by the company would be held in trust for Mr. Grant and that TD would provide a discharge of its security at that time, TD has made clear that it will not deliver any discharge of its security. The fact that TD contends that it was not asked by GFPI to deliver a discharge of its security is, in my view, neither here nor there. It was made quite clear by TD to GFPI that if there was to be a restructuring, the US $10 million should stay in the company.

[35] The issue is what right Mr. Grant has, if any, to receive the 2009 tax refund.

[36] There was no condition in the tax refund agreement that was required to be fulfilled before the transfer was to be delivered to Mr. Grant on January 2, 2009, nor any test or judgment call of any kind to be made by GFPI. The only purpose in having half of the US $20 million tax refund being purchased by Mr. Grant to be a purchase in 2009 was to stay onside the lending

agreements which permitted only US $10 million in assets to be sold in any year out of the ordinary course of business. The 2009 closing to take place on January 2, 2009 was thus a technical, albeit important, provision that was to be automatically carried out by GFPI. Nor was the obligation of GFPI to deliver the transfer in any way conditional on the lenders providing a release of their security.

[37] It would be completely inequitable, in my view, for GFPI to take advantage of its own breach in failing to deliver the transfer to Mr. Grant and then contend that because of that failure, its requirement to hold the funds received from CRA in trust under s. 5.02 does not arise because the 2009 closing has not taken place, i.e., for GFPI to contend that as it is only funds received from CRA "after the completion of the 2009 Closing" that are to be held in trust, and if the funds are received before the closing has taken place they are not subject to the trust in favour of Mr. Grant. That was not at all the intent of the agreement. GFPI does not argue this, as it takes no position on the motion by Mr. Grant. TD however does. Mr. McElcheran said in argument that TD is taking this position on behalf of GFPI.

[38] In my view, the principle that equity considers done what ought to be done is applicable and the transfer by GFPI of the 2009 tax refund to Mr. Grant that was to occur on January 2, 2009 is to be treated as if it did take place.

[39] The principle is well known and of some antiquity. It was explained in *Bliss v. Doyle* (1983), 44 O.R. (2d) 129 by Krever J. (as he then was) by the following:

> In Snell's Principles of Equity, 27th ed. (1973), one finds the following explanation of the maxim at p. 40:
>
> > This maxim has its most frequent application in the case of contracts. Equity treats a contract to do a thing as if the thing were already done, though only in favour of persons entitled to enforce the contract specifically and not in favour of volunteers. Agreements for value are thus often treated as if they had been performed at the time when they ought to have been performed, with the same consequences as if they had then been completely performed. For example, a person who enters into possession of land under a specifically enforceable agreement for a lease is regarded in any court which has jurisdiction to enforce the agreement as being in the same position as between himself and the other party to the agreement as if the lease had actually been granted to him.

> Other examples of the maxim will be found in the enforcement of an imperfect trust made for value, the qualified trust for a purchaser imposed by equity upon the vendor, the rule in *Howe v. Earl of Dartmouth*, and the doctrine of conversion.

[40] The maxim was applied in *Wood v. Guarantee Co. of North America* (1975), 10 O.R. (2d) 661. In that case an insurer failed to issue a policy that its agent had committed it to issue. The insurer sought to avoid an obligation under the Judicature Act to pay interest by way of damages on an insurance policy by contending that the policy had not been issued. Southey J. rejected the argument and stated:

> The present action is not an action on a policy of insurance, because no policy was in fact issued by the insurer. The insurer, however, was under an obligation to issue a policy of insurance in accordance with the agreement made with the plaintiff and it would be a strange result, indeed, if the insurer could avoid liability for interest in the nature of damages under the Judicature Act because of its failure to issue a policy. The plaintiff could have sued for specific performance of the contract of insurance and thereby forced the Guarantee Company to issue a policy. I think I am entitled under s. 18(1) of the Judicature Act to apply the equitable principle that equity looks on that as done which ought to be done (14 Hals., 3rd ed., p. 532), and proceed in this case as though a policy had been issued.

[41] It was contended on behalf of TD that to apply this equitable maxim flies in the face of s. 5.02 of the tax refund agreement that provides that Mr. Grant obtains no interest in the 2009 tax refund before the vendor delivers the transfer at the closing on January 2, 2009 and, that as the transfer was not delivered, it would be effectively re-writing the agreement to provide for it now. I do not agree. The application of the maxim does not mean that Mr. Grant will have received his interest in the second half of the tax refund in 2008. The application of the maxim results in the court proceeding as if the transfer took place on January 2, 2009, which is what the agreement contemplated.

[42] As the transfer is thus taken to have occurred on January 2, 2009, the trust obligation imposed on GFPI under s. 5.06 of the agreement is effective and requires GFPI to hold for Mr. Grant US $10 million of the tax refund for 2009 when it is received from CRA. Moreover, under s. 5.04 of agreement, Mr. Grant is entitled to direct the CRA to deliver that amount to him rather than to GFPI. S. 5.04 provides in part:

> Either party may, after the delivery to the Purchaser of the transfer of the Sold 2009 Refund referred to in Section 7.04(a), direct CRA, the Finance Minister and any other appropriate person to pay the Sold 2009 Refund to the Purchaser.

[43] I do not think that the lack of discharges from TD of the first and second lien lenders affects the substance of the rights of Mr. Grant to the 2009 tax refund. The obligation in the tax refund agreement to deliver the discharges on the 2009 closing was that of GFPI, and thus GFPI was required under the agreement to do what was necessary to acquire those discharges from TD. Under s. 5.02 of the agreement, Mr. Grant was to acquire his title or ownership to the 2009 tax refund on January 2, 2009 solely by the transfer being delivered to him. The failure of GFPI to obtain the discharges from TD could not affect that delivery of title from GFPI to Mr. Grant. At most, if the lenders had security over the 2009 tax refund, it would mean that Mr. Grant's ownership of that asset was subject to the lenders' security. I do not see how the failure of GFPI to obtain discharges from the lenders for delivery to Mr. Grant could affect the trust provision in s. 5.06. It would amount to GFPI taking advantage of its own breach of agreement to argue there was no closing because it did not provide the discharges from the lenders to Mr. Grant.[2]

[44] In my view, and I so find, as the transfer from GFPI to Mr. Grant is deemed at equity to have been delivered on January 2, 2009, the trust provisions of s. 5.06 mean that if the tax refund due to Mr. Grant is received by GFPI, it is to be held in trust for him and the first and second lien lenders do not have any security over it.

[45] I do not agree with the assertion by TD that to now order GFPI to deliver a transfer of the 2009 tax refund would amount to a preference in favour of Mr. Grant. It would not be providing Mr. Grant as an unsecured creditor with a payment from the company's assets ahead of other creditors. Rather it would be effecting delivery to him of an asset belong to him. It is not the company's asset.

[46] Moreover, while Mr. McElcheran contends that the tax recovery is not something that TD is asking for itself, but something TD is asking for GFPI, and that TD as agent for the first lien

---

[2] TD does not argue that the lack of discharges from the first and second lien holders prevents the trust provisions of s. 5.06 from being applicable. It relies on the failure of GFPI to deliver the transfer on January 2, 2009 for its contention that the 2009 closing did not take place.

lenders is not trying to scoop the tax refund, this appears inconsistent with the position taken by TD in August of this year on the motion regarding the validity of the KERP payment for Mr. Lynch, which TD supported. TD relied on marketing information provided by the Monitor and Mr. Stephen to the Court on a confidential basis that the secured creditors will likely incur substantial shortfalls and that there likely will be no recovery for the unsecured creditors. If that is the case, the result of TD being successful in its position on this motion would be a benefit to its position as agent for the first lien lenders.[3] This would be quite inconsistent with the lending agreements which expressly permitted the sale of these tax refunds free of the security of the lenders.

[47] Whether the result in favour of Mr. Grant is by reason of the application of the equitable maxim that equity considers done what ought to be done or by reason of an order that GFPI now deliver a transfer to Mr. Grant, in substance the result would be the same. I do not think that the equities of the situation should be affected by the form of the relief granted. If requested, I would order the transfer to Mr. Grant by GFPI to be now made under s. 5.02 of the agreement, but I do not see the need for that to be done.

Conclusion

[48] I declare:

(a) The transfer to Mr. Grant of the 2009 tax refund due to him under s. 5.02 of the tax refund agreement has in equity taken place as of January 2, 2009 and that Mr. Grant has acquired full right, title and interest in the tax refund as of that date. Mr. Grant is entitled if he wishes to receive a transfer document from GFPI under s. 5.02 effective January 2, 2009.

[3] The fourth report of the Monitor dated October 8, 2009 contains a cash flow projection from September 28, 2009 to December 6, 2009 which the Monitor states indicates that the applicants will have sufficient liquidity to sustain ordinary course operations during the projection period. This statement projects US 14,444 million being received as a corporate tax refund in the week ending December 6, 2009 and US $10 million of that being transferred to an escrow in accordance with my interim ruling at the conclusion of the argument on this motion. That is, the refund due to Mr. Grant is not necessary for the applicants' cash flow for the period, at the end of which the projected cash position of the applicants will be a positive US $26,491 million.

(b) Mr. Grant is also entitled if he wishes to direct CRA, the Finance Minister or any other appropriate person under s. 5.04 of the tax refund agreement to pay the tax refund due to him directly to him.

(c) If the 2009 tax refund due Mr. Grant is received by GFPI, it will be received by GFPI in trust for Mr. Grant and GFPI shall be obliged to forthwith pay it to Mr. Grant.

[49] Mr. Grant is entitled to his costs from TD. If not agreed, brief submissions in writing with a draft bill of costs may be made on his behalf within 10 days and TD shall have 10 days to reply.

NEWBOULD J.

DATE: October 13, 2009

TAB 4

Court File No. M38120

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE	)	**TUESDAY, THE 27TH DAY**
	)	
JUSTICE MACPHERSON	)	**OF OCTOBER, 2009**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

Applicants

ORDER

(Motion to expedite motion for leave to appeal and for a stay pending the motion for leave to appeal, returnable October 27, 2009)

THIS MOTION, made by The Toronto-Dominion Bank in its capacity as Agent for the First Lien Lenders ("TD") to expedite its motion for leave to appeal the judgment of Newbould J. dated October 13, 2009 and for a stay of that judgment pending the application for leave to appeal, was heard this day, at Osgoode Hall, Toronto.

ON READING the Notice of Motion and the Affidavit of William O'Connor sworn October 20, 2009, and on hearing the submissions of counsel for TD, Peter Grant Sr., the Monitor Ernst & Young Inc. and Grant Forest Products Inc.:

1. **THIS COURT ORDERS** that, on consent, TD shall file its leave to appeal factum by November 3, 2009 and Mr. Grant shall file his responding factum by November 16, 2009. The

file will then be distributed to a panel of this court which will attempt to determine whether leave to appeal is granted by November 20, 2009. If leave to appeal is granted, the goal would be that the appeal would be heard soon after November 20, 2009. The Honourable Justice MacPherson will serve as case management judge for the matters set out in this paragraph.

2. **THIS COURT ORDERS** that the motion for a stay pending the motion for leave to appeal, and if leave is granted, pending the disposition of the appeal, is dismissed without costs.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC. et al.

Court File No. M38120

COURT OF APPEAL FOR ONTARIO

ORDER

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSUC# 34701O
Tel. 416 601-7856
Fax: 416 868-0673

Lawyers for The Toronto-Dominion Bank

#777079

TAB # 5.

N THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, :. C-36, AS AMENDED

N THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC. et al.

M38119

Court File No. M38120

COURT OF APPEAL FOR ONTARIO

BEFORE : MacPherson J.A.

DATE : Oct 27, 2009

DISPOSITION OF MOTION

The moving party Toronto-Dominion Bank seeks a stay of the judgment of Newbould J. dated 13 October 2009 pending its application for leave to appeal that judgment and, if leave is granted, pending the hearing and determination of the appeal. The motion falls to be determined under the test in RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311.

The motion founders at the second stage of the RJR test where "the applicant must convince the court that it will suffer irreparable harm if the relief is not granted." (para. 79)

TD's evidence in support of irreparable harm is contained in paragraphs 11-13 of the affidavit of William O'Connor, a vice-president of TD Securities.

(over)

COURT OF APPEAL FOR ONTARIO

MOTION RECORD
(Returnable October 27, 2009)

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSUC# 34701O
Tel. 416 601-7856
Fax: 416 868-0673

Lawyers for The Toronto-Dominion Bank

#756446

In these paragraphs, Mr. O'Connor essentially says two things: (1) the $1.4 million in issue on this motion is needed for Grant Forest Products Inc.'s restructuring, and (2) Mr. Grant "may be unable to repay tax refunds which are paid over to him if this court ultimately determines that he is not entitled to them."

The first submission is belied by the record. Indeed, TD relies on "cash flow forecasts provided to TD prior to the filing of CCAA proceedings". More recent financial information, namely the fourth report of the Monitor dated October 8, 2009, contains a cash flow projection from September 28 - December 6, 2009 that suggests that the company will have more than US $26,000,000 at the end of that period. Accordingly, it does not seem that the $1.4 million tax refund is central to any proposed restructuring of GFPI.

TD's second submission is entirely speculative. There is no information about Mr. Grant's current financial situation, or his past conduct, to suggest that he would be unable or unwilling to comply with a court order that he return the $1.4 million tax refund.

The motion is dismissed, without costs.

On consent, it is ordered that ~~it~~ TD file its leave to appeal factum by November 3 and that Mr. Grant file his responding factum by November 16. The file will then be distributed to a panel of this court which will do its best to decide whether leave to appeal is granted by November 20. If leave to appeal is granted, the goal would be that the appeal be heard soon after November 20. I will serve as case management judge for the matters set out in this paragraph.

K M. [illegible] J.A.

TAB # 6.

Court File No. CV-09-8247-00CL

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

AFFIDAVIT OF WILLIAM O'CONNOR

I, William O'Connor, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

Introduction

1. I am a Vice-President and Director of TD Securities, a division of The Toronto-Dominion Bank ("TD" or the "Agent"). As such, I have personal knowledge of the matters to which I depose in this affidavit. Where facts stated in this affidavit are not based on my personal knowledge, I have stated the source of my information and in all such cases, I verily believe such facts to be true.

GFPI's CCAA proceedings

2. Grant Forest Products Inc. ("GFPI") is in the lumber business. It is ultimately owned by the responding party Peter Grant Sr. On June 25, 2009, GFPI filed for and obtained protection

from its creditors under the *Companies' Creditors Arrangement Act* (the "CCAA"). The CCAA proceedings are ongoing.

3. At present, the stay of proceedings under the CCAA has been extended to December 1, 2009, primarily in order to allow a process for the marketing of GPFI's assets to be advanced. A copy of the order of Justice Newbould dated October 13, 2009 extending the stay to December 1, 2009 is attached as Exhibit "A". A copy of the most recent report of the monitor, Ernst & Young Inc. (the "Monitor"), which was used to obtain the stay extension order and which sets out the status of the CCAA proceedings, is attached as Exhibit "B".

The motion

4. On October 5, 2009, Mr. Grant brought the motion which now gives rise to these proceedings. He moved before the Honourable Justice Newbould for an order in connection with an agreement under which he agreed to purchase from GFPI $10 million U.S. in tax refunds due from the Canada Revenue Agency (the "CRA") to GFPI in 2009. TD opposed the motion. TD is agent for a lending syndicate which holds first ranking security over the assets of GFPI.

5. On October 13, 2009, Justice Newbould issued an endorsement granting Mr. Grant the relief that he was seeking. A copy of Justice Newbould's endorsement is attached as Exhibit "C".

6. Specifically, Justice Newbould held that pursuant to the relevant contract, Mr. Grant has acquired full right, title and interest in the tax refunds which are owing by the CRA to GFPI in 2009, and held that if GFPI receives the 2009 tax refund it will be received in trust for Mr. Grant

and GFPI will be obliged to pay it forthwith to Mr. Grant. TD asserts that the ruling of Justice Newbould is contrary to the express provisions of the Agreement under which Mr. Grant agreed to purchase the 2009 tax refunds.

Subsequent developments giving rise to the need for this motion

7. TD wishes to seek leave to appeal Justice Newbould's order to this court. It has served a notice of motion for leave to appeal. A copy is attached as Exhibit "D".

8. On Friday, October 16, 2009 (three days after the issuance of Justice Newbould's endorsement) at 2:28 p.m., Kevin McElcheran of McCarthy Tétrault LLP, counsel for TD, received an e-mail from Sean Dunphy of Stikeman Elliott LLP, counsel for the Monitor. Mr. Dunphy advised as follows:

> "[W]e are advised that one of the tax refunds (approx $1.4mm) has arrived. The Company is in the process of endorsing over to P. Grant Sr. The Monitor has asked the company to hold off for 48hrs (till close on Tuesday) to give you a fair chance to seek a stay if so advised. We were not aware the receipt of refunds was this imminent, so there would appear to be less time to consider your course of action than you may have expected. Please let us know as soon as you can what your intentions are."

A copy of Mr. Dunphy's e-mail is attached as Exhibit "E".

9. Accordingly, TD is bringing this motion, on an urgent basis, for a stay of Justice Newbould's order until the disposition of this motion for leave to appeal and, if leave is granted, until the disposition of the appeal in this court.

Serious issues

10. TD believes that the issues raised in its notice of motion for leave to appeal raise serious issues for consideration by this court.

Irreparable harm

11. GFPI is in dire financial straits and needs all the cash to which it is entitled. If Justice Newbould's order is not stayed, GFPI will be required to pay over to Mr. Grant approximately $1.4 million which it needs for its restructuring.

12. The cash flow forecasts provided to TD prior to the filing of CCAA proceedings by GFPI indicate that GFPI needs the 2009 tax returns to continue its operations and the payment to Mr. Grant of the 2009 tax refunds may jeopardize the restructuring of GFPI. If the 2009 refunds are paid to Mr. Grant, any delay in their return may jeopardize the restructuring of GFPI's business.

13. Moreover, I understand that Mr. Grant is the ultimate shareholder of GFPI, along with a family trust. TD is concerned that GFPI's financial distress may have caused financial distress to Mr. Grant personally, such that he may be unable to repay tax refunds which are paid over to him if this court ultimately determines that he is not entitled to them.

Balance of convenience

14. TD is willing to expedite this motion for leave to appeal, and the appeal itself if leave to appeal is granted. GFPI's current stay of proceedings is in place until December 1, 2009 in order to permit a process for the marketing of GFPI's assets to unfold. Subject to the availability of

time in this court, the leave motion and, if leave is granted, the appeal itself can be dealt with prior to December 1, 2009, which means that the proceedings in this court will not interfere in any way with the ongoing restructuring.

SWORN before me at the City of Toronto, in the Province of Ontario this 20th day of October, 2009.	)))))))	
A Commissioner/Notary Public		William O'Connor

TAB A

Court File No. CV-09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	TUESDAY, THE 13TH DAY OF
	)	
JUSTICE NEWBOULD	)	OCTOBER, 2009

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP (the "Applicants")

ORDER

THIS MOTION, made by the Applicants, for an order in the form attached as schedule "A" to the notice of motion of the Applicant dated October 6, 2009 (the "**Notice of Motion**") *inter alia*: (i) abridging and validating the timing and method of service of this Motion Record so that the Motion is properly returnable; (ii) extending until December 1, 2009 the Stay Period, as defined by the Order of the Honourable Mr. Justice Newbould in these proceedings made on June 25, 2009 (the "**Initial Order**"); and (iii) approving the fourth report of Ernst & Young Inc. dated October 8, 2009 (the "**Fourth Report**") in its capacity as court-appointed Monitor of the Applicants (the "**Monitor**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Hap Stephen sworn October 6, 2009, the Fourth Report of the Monitor and the appendices thereto and on hearing the submissions of counsel for the Applicants, the Monitor, ~~The Toronto-Dominion Bank, as agent for the first lien lenders,~~ the independent directors of Grant Forest Products Inc., Peter Grant Sr., JNS

This is Exhibit "A" referred to in the affidavit of ... sworn before me, this 20th day of October 20...

A COMMISSIONER FOR TAKING AFFIDAVITS

7360499_5.DOC

and no one else appearing although duly served as appears from the affidavit of service of Stephanie Waugh sworn October 6, 2009;

Service

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

Approval of Monitor's Activities

2. **THIS COURT ORDERS** that the Fourth Report of the Monitor and the activities of the Monitor as set out therein, be and are hereby approved.

Extension of Stay of Proceedings

3. **THIS COURT ORDERS** that the "Stay Period" as defined in paragraph 21 of the Initial Order, be and is hereby extended to December 1, 2009, subject to the terms of this Order.

J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO
LE / DANS LE REGISTRE NO

OCT 1 3 2009

PER / PAR

Court File No: CV-09-8247-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP (the "Applicants")

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

ORDER

(October 13, 2009)

FRASER MILNER CASGRAIN LLP
1 First Canadian Place
100 King Street West,
Toronto, Ontario
M5X 1B2

Lawyer:	Daniel R. Dowdall / Jane Dietrich
LSUC:	16737D / 49302U
Email:	dan.dowdall@fmc-law.com jane.dietrich@fmc-law.com
Telephone:	416 863-4700 / 416-863-4467
Facsimile:	416 863-4592

Lawyers for the Applicants Grant Forest Products Inc., Grant Alberta Inc., Grant Forest Products Sales Inc., and Grant U.S. Holdings GP

7360499_5.DOC

TAB B

Court File No.: CV-09-824700CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. AND GRANT U.S. HOLDINGS GP

Applicants

FOURTH REPORT OF THE MONITOR DATED OCTOBER 8, 2009

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Sean Dunphy LSUC#: 24941J
Tel: (416) 869-5662
Kathy Mah LSUC#51077W
Tel: (416) 869-5652
Fax: (416) 947-0866

Solicitors for the Monitor, Ernst & Young Inc.

This is Exhibit "B" referred to in the affidavit of William O'Connor
sworn before me, this 20th
day of October 20[illegible]

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No.: CV-09-824700CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. AND GRANT U.S. HOLDINGS GP

Applicants

FOURTH REPORT OF THE MONITOR DATED OCTOBER 8, 2009

INTRODUCTION

1. On June 25, 2009, Grant Forest Products Inc. ("**GFPI**"), Grant Alberta Inc. ("**GAI**"), Grant Forest Products Sales Inc. ("**GFPSI**") and Grant U.S. Holdings GP ("**U.S. Holdings**") (collectively "**Grant**" or the "**Applicants**") filed for and obtained protection under the *Companies' Creditors Arrangement Act* ("**CCAA**") in order to restructure the business and affairs of the Applicants. Pursuant to the Order of this Honourable Court dated June 25, 2009 (the "**Initial Order**"), Ernst & Young Inc. ("**EYI**") was appointed as the Monitor of the Applicants (the "**Monitor**") in the CCAA proceeding. The Initial Order provided for a stay of proceedings through to July 24, 2009. The stay of proceedings was subsequently extended to October 15, 2009 (the "**Stay Period**") pursuant to an Order of this Honourable Court dated July 24, 2009.

PURPOSE

2. The purpose of this Fourth Report of the Monitor (the "**Fourth Report**") is to report to this Honourable Court with respect to:

a. the status of the marketing process as described in the Initial Order (the "**Marketing Process**");

b. actual receipts and disbursements of the Applicants from July 13, 2009 to September 27, 2009 as well as the Applicants' revised cash flow projection from September 28, 2009 to December 6, 2009;

c. the motion by the Applicants to extend the stay period to December 1, 2009; and

d. the Applicants' motion to approve this Fourth Report and the conduct and activities of the Monitor as presented in this Fourth Report

TERMS OF REFERENCE

3. In preparing this Report, the Monitor has been provided with and in making the comments herein relied upon unaudited financial information, the Applicants' books and records, financial information prepared by the Applicants and discussions with management of the Applicants. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of such information contained in this Fourth Report. Some of the information referred to in this Fourth Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Canadian Institute of Chartered Accountants ("**CICA**") Handbook, has not been performed. Future oriented financial information referred to in this report was prepared based on management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

4. Unless otherwise stated all monetary amounts contained herein are expressed in U.S. Dollars.

5. Capitalized terms not defined in this Report are defined in the Initial Order or previous Reports of the Monitor.

BACKGROUND

6. GFPI and certain of its subsidiaries are privately owned corporations carrying on an Oriented Strand Board ("**OSB**") manufacturing business from facilities located in Canada and the U.S. OSB is an engineered, mat-formed panel product made of strands, flakes or wafers sliced from logs and bonded with an exterior-type binder under heat and pressure. The most common uses are sheathing in walls, floors and roofs in the construction of buildings and residential housing.

7. The Applicants and certain of their subsidiaries or other related parties, namely Southeast Properties LLC, Grant Newco LLC, Grant Clarendon LP, Grant Allendale LP, Grant Excluded FP, Grant U.S. Sales Inc. and Footner Forest Products Ltd. ("**Footner**") (collectively, the "**Subsidiaries**"), have a total annual capacity to produce 3.7 billion square feet of OSB, which makes them the third largest OSB manufacturer in North America.

8. The Applicants and the Subsidiaries have interests in three mills in Canada located at Englehart and Timmins in Ontario and High Level in Alberta. The Applicants and their Subsidiaries also have interests in the Allendale and Clarendon mills located in South Carolina in the United States. The mills located in Englehart and Timmins in Ontario are owned by GFPI and, as such, they are included in Grant's CCAA proceedings. GFPI also has a 50% interest in a mill located at High Level in Alberta. This mill is held by Footner as bare trustee and GFPI owns 50% of the shares of Footner. The Allendale and Clarendon mills in South Carolina are owned by Grant Allendale LP and Grant Clarendon LP respectively, which are 99.9% owned by Southeast Properties LLC, but these mills are indirectly owned by GFPI.

9. As a result of the present market conditions and the reduced demand for OSB and other wood products, only the OSB mills located in Englehart, Ontario and

Allendale, South Carolina, are presently operating. Both the mill in Timmins, Ontario and the mill in High Level, Alberta are idle. The mill in Clarendon, South Carolina is a new mill which is substantially complete but has not yet been put into production.

10. On June 25, 2009, this Honourable Court issued the Initial Order which, among other things, approved the continuation of the engagement of Stonecrest Capital Inc. ("**Stonecrest**") as Chief Restructuring Advisor (the "**CRA**") with services to be provided by Hap Stephen and Sandra Rosch.

STATUS OF THE MARKETING PROCESS

11. The Initial Order provided for the immediate commencement of the Marketing Process in accordance with the protocol attached as Appendix "A" to the Initial Order (the "**Investment Offering Protocol**") to provide interested parties with the opportunity to offer to purchase the business and operations of the Applicants and their Subsidiaries as a going concern or offer to sponsor a plan of arrangement of the Applicants, or any of them.

12. As set out in the Second Report, paragraph 18 of the Initial Order and the Investment Offering Protocol authorized and directed the Applicants to engage an investment offering advisor (the "**Investment Offering Advisor**"), subject to the approval of the Monitor and the Toronto-Dominion Bank, the Agent of the First Lien Lenders (the "**Agent**"), to assist in connection with the conduct of the Marketing Process. Subsequent to the issuance of the Initial Order, the Applicants requested that the Monitor undertake the role of the Investment Offering Advisor. The Agent was also in concurrence with the Monitor fulfilling the Investment Offering Advisor role.

13. As set out in the Second Report, further to the appointment of the Monitor as the Investment Offering Advisor, Grant, the CRA and the Monitor have collectively taken the following steps:

a. Prepared a two page overview of the Applicants' business and operations (the "**Teaser**") and a non-disclosure agreement (the "**NDA**") to be executed by interested parties who plan to participate in the Marketing Process;

b. Set up a data room including materials relevant for assessing the business and operations of the Applicants;

c. Compiled a list of potential interested parties including parties that expressed an interest in Grant's operations prior to the CCAA proceedings and other parties whose interest is known to Grant, the Monitor or the Investment Offering Advisor. The Monitor also requested the Agent and the second lien agent for names to be added to the list of interested parties;

d. Contacted a significant number of potential interested parties by phone and distributed the Teaser and the NDA to these interested parties (or a waiver with respect to a condition in certain NDAs previously executed by interested parties);

e. Negotiated NDAs as required and finalized the bid protocol letter and the expression of interest letter; and

f. Updated Grant's management presentation and presented it to the interested parties who have executed NDAs.

14. At the end of Phase 1 on July 31, 2009, Grant received certain expressions of interest from interested parties. Pursuant to the Initial Order, these expressions of interest were evaluated by the Investment Offering Advisor, the CRA and the Monitor in consultation with an independent committee of the Board of Directors of Grant (the "**Independent Committee**"), and the Agent. Based on the evaluation, a short list of interested parties were invited to Phase II to conduct further due diligence. The Monitor also informed a member of the second lien lenders as to how many parties were being invited into Phase II.

15. During Phase II, interested parties were provided access to Grant's facilities and permitted to conduct further due diligence. The Investment Offering Advisor attended each facility visit and facilitated the due diligence process with the CRA and with the assistance of Grant's management. The Investment Offering Advisor and the CRA also facilitated one on one meetings with each potential bidder and Grant's management.

16. Interested parties initially had until August 30, 2009 to submit revised proposals to the Investment Offering Advisor. In accordance with the Initial Order, this date was subsequently extended to September 11, 2009 by Grant with the consent of the Monitor and the Agent.

17. In accordance with the Initial Order, Grant further extended the date for certain interested parties to complete their due diligence and submit revised proposals to October 2, 2009 and extended the date to file a plan of arrangement and submit the plan to affected creditors or complete an asset purchase agreement and submit the same to the Court for approval, to October 30, 2009. This amendment was consented to by the Monitor and the Agent.

18. The CRA and the Monitor are collectively evaluating the revised proposals received and will review the proposals with the Independent Committee, and in consultation with the Agent and the second lien agent, will select a bidder to proceed to Phase III. The analysis and results of the Marketing Process will be reported to this Honourable Court in the near future.

ACTUAL CASH RECEIPTS AND DISBURSEMENTS

19. A summary of the actual receipts and disbursements as compared to the projection set out in the Second Report, is attached as Appendix "A" to this Fourth Report.

20. The Applicants' actual consolidated net cash inflow for the period from July 13, 2009 to September 27, 2009 was $1.8 million. The actual net cash inflow was higher than projected by approximately $2.2 million primarily as a result of higher than anticipated sales and a stronger Canadian dollar as compared to the

exchange rate used in the projection. Grant has ramped up its production since the commencement of the CCAA proceedings to meet the higher demand for its product.

UPDATED CASH FLOW PROJECTION

21. Grant, with the assistance of the Monitor, had prepared a cash flow projection for the period from September 28, 2009 to December 6, 2009, (the "**Cash Flow Forecast**") a copy of which is attached as Appendix "B" to this Fourth Report.

22. The Cash Flow Forecast attached to this Fourth Report reflects receipts and disbursements to be received or paid over the projection period in U.S. dollars.

23. The Applicants are projecting a net cash outflow of approximately $2.4 million during the projection period prior to transfers of funds to Footner and Grant's U.S. affiliates.

24. During the projection period, Grant estimates that the Applicants will not be required to transfer funds to its U.S. affiliates and will be required to transfer approximately $0.3 million to Footner. Such transfers to these affiliates preserve Grant's interests in these operations.

25. The Cash Flow Forecast projects that the Applicants will have sufficient liquidity to operate during the proposed stay period as discussed further in this Fourth Report.

STAY EXTENSION

26. The current stay of proceedings under the Initial Order expires on October 15, 2009. The Applicants are seeking an extension of the stay period to December 1, 2009 in order to permit them time to undertake the Marketing Process as set out in the Investment Offering Protocol, undertake the Non-Core Asset Sale Process and continue discussions with their key stakeholders regarding its restructuring alternatives.

27. The updated cash flows described earlier in this Fourth Report which cover the period from September 28, 2009 to December 6, 2009 indicate that the Applicants will have sufficient liquidity to sustain ordinary course operations during the projection period.

28. It is the Monitor's view that the Applicants have acted in accordance with the Initial Order and are working on the Marketing Process diligently. Accordingly, the Monitor is satisfied that the Applicants are acting in good faith and with due diligence.

RECOMMENDATIONS

29. The Applicants are seeking this Honourable Court's authorization for the following:

   a. an extension of the stay of proceedings to December 1, 2009; and

   b. approving the Fourth Report and the conduct and activities of the Monitor as presented in the Fourth Report.

All of which is respectfully submitted this 8th day of October, 2009.

ERNST & YOUNG INC.
in its capacity as the Monitor of
Grant Forest Products Inc.,
Grant Alberta Inc.,
Grant Forest Products Sales Inc., and
Grant U.S. Holdings G.P.

Per:

Alex Morrison
Senior Vice President

APPENDIX A

Grant Forest Products Inc., Grant Alberta Inc., Grant Forest Products Sales Inc., and Grant U.S. Holdings GP. ("Applicants")
Cumulative Combined Receipts and Disbursements
For The Period From July 13 to September 27, 2009
(In Thousands of US Dollars)

	Actual	Projection	Variance	Notes
Opening Bank Balance	28,474	28,474	-	
Receipts				
OSB Sales	29,776	25,459	4,317	1
Wood Sales	1,542	194	1,348	2
GST Collected & Refunds	414	1,249	(835)	3
Interest Income	-	12	(12)	
Other Receipts	752	32	720	4
Total Receipts	32,484	26,946	5,538	
Disbursements				
Payables-Wood	(7,867)	(6,063)	(1,804)	5
Freight	(3,703)	(3,999)	296	6
Other Payables	(9,324)	(7,539)	(1,785)	7
Payroll	(5,538)	(3,968)	(1,570)	8
Utilities & Fuel	(997)	(1,259)	262	9
GST Remittance	(759)	(542)	(217)	10
SG&A	(1,016)	(1,008)	(8)	
Restructuring Costs	(2,369)	(2,509)	141	
Bank Charges	-	(4)	4	
Capex	(4)	(50)	46	
Foreign Exchange Impact	867	(414)	1,281	11
Total Disbursements	(30,710)	(27,355)	(3,355)	
Net Cash Flows	1,775	(409)	2,184	
Inter-Company Transfers:				
Transfer from (to) US Companies	(500)	-	(500)	
Transfers from (to) Footner	(184)	(573)	390	
Total Inter-Company Transfers	(684)	(573)	(110)	
Ending Bank Balance	29,564	27,491	2,073	
Deduct: Restricted Cash	(427)	(388)	(39)	
Ending Cash excluding Restricted Cash	29,137	27,104	2,034	

Grant Forest Products Inc., Grant Alberta Inc., Grant Forest Products Sales Inc., and Grant U.S. Holdings GP. ("Applicants")
Combined Actual Receipts and Disbursements
For Period July 13 to September 27, 2009
Variance Analysis

The actual receipts and disbursements are denominated in US dollars. Canadian dollars are converted to US dollars every week at Thursday's closing exchange rate as published by the Bank of Canada. In the projection, Canadian dollars are converted to U.S. dollars at the exchange rate of CDN$1.20=US$1.00.

1. **OSB Sales** – The positive variance is primarily due to a) higher than expected sales volume; b) the translation of CDN$ sales into U.S. currency at lower CDN$/US$ exchange rates; c) the collection of overdue June accounts receivables; and d) a change in classification of GST collected. Actual OSB sales include GST collected, which was reflected in the projection under the GST Collected and Refunds line item. Accordingly, this portion of variance reflects a change in classification.

2. **Wood Sales** – The Applicants sold higher than anticipated volumes of certain wood species that are not used in production at Englehart.

3. **GST Collected and Refunds** – The negative variance is as a result of a timing difference related to the Applicants' outstanding August GST refund; a lower than expected June GST refund and the classification of GST collected into the OSB sales line item as described in Note 1.

   The Applicants are awaiting the receipt of its August GST refund that was forecast in this period. Accordingly, this portion of the variance is caused by timing and is expected to reverse in the future. The Canada Revenue Agency re-assessed the Applicants' June GST liability and adjusted the refund for invoices that were stayed as a result of the CCAA.

4. **Other Receipts** – A portion of the favorable variance is related to the classification of payroll reimbursements. Actual receipts include reimbursements of US$380k for payroll and other costs paid by the Applicants on behalf of its affiliates, whereas the projection offset a certain portion of such payroll expense against SG&A. The remainder of the variance represents miscellaneous receipts that were not contemplated in the projection.

5. **Payables Wood** – The Applicants incurred higher costs for purchases of certain wood for the ramp up of production at the Englehart mill, which has been operating at full capacity since July. The increased supply of wood contributed to higher wood sales in the current period as described in Note 2. The unfavourable variance was also increased by an adverse usage variance.

   Further, the lower CDN$/US$ exchange rates contributed to the unfavourable variance as CDN$ disbursements were translated to U.S. currency. Such translation is done for presentation purposes only.

6. **Freight** – This favorable variance is as a result of lower than expected freight costs and timing differences. Actual freight per unit of wood is lower than projected largely because the Applicant's sales to their Canadian customers who are located at closer distance relative to their U.S. customers. The portion of variance that is related to timing is expected to reverse in the future.

7. **Other Payables** – The unfavourable variance reflects a combination of higher production related costs due to higher production volume and the translation of CDN$ disbursements into U.S. currency at the lower CDN$/US$ exchange rates.

8. **Payroll** – The unfavourable variance is primarily due to the employee incentive payments that were not contemplated in the projection. In addition, the Applicants discontinued a significant portion of payroll processing conducted on behalf of their affiliates. A large portion of the unfavourable variance is related to such discontinuation being done later than projected. These costs were reimbursed by the affiliates and therefore there is no cash impact. The remainder of the variance is primarily related to foreign exchange translation and higher than anticipated overtime pay as a result of increased production.

9. **Utilities & Fuel** – The favorable variance is primarily as a result of timing differences and is expected to reverse in the future.

10. **GST Remittance** – The Applicants submitted its August GST remittance that was projected to be paid in the following week. Accordingly, the variance represents a timing difference and is expected to reverse in the future.

11. **Foreign Exchange Impact** –The variance is primarily due to the conversion of the opening Canadian dollar balance to US currency using Thursday's closing rate as published by the Bank of Canada. This balance reflects a holding foreign exchange difference on the opening Canadian dollar cash balance as of July 13, 2009.

APPENDIX B

Grant Forest Products Inc., Grant Alberta Inc., Grant Forest Products Sales Inc., and Grant U.S. Holdings GP. ("Applicants") Consolidated Cash Flow Projection
For The Period From September 28, 2009 to December 6, 2009
(In Thousands of US Dollars)

Week Ending	Notes	4-Oct	11-Oct	18-Oct	25-Oct	1-Nov	8-Nov	15-Nov	22-Nov	29-Nov	6-Dec	Total
Opening Bank Balance	1	29,564	29,393	29,546	29,167	28,033	27,960	24,445	25,312	24,223	24,144	29,564
Receipts												
OSB Sales	2	3,071	2,196	2,428	1,596	1,995	1,995	1,995	1,545	1,545	1,159	19,524
Wood Sales	3	226	-	-	-	-	44	-	22	-	22	313
GST Refunds	4	352	-	-	-	235	-	-	-	235	-	822
Interest Income	5	-	-	-	-	-	6	-	-	-	5	11
Other Receipts	6	58	7	27	7	7	7	27	7	7	7	161
Corporate Tax Refund	7	-	-	-	-	-	-	-	-	-	14,444	14,444
Total Receipts		3,708	2,203	2,455	1,603	2,237	2,051	2,021	1,574	1,788	15,638	35,276
Disbursements												
Payables-Wood	8	(2,093)	-	(1,601)	-	-	(2,673)	-	(1,004)	-	(1,069)	(8,440)
Freight	9	(99)	(528)	(120)	(418)	(120)	(478)	(120)	(358)	(120)	(239)	(2,600)
Other Payables	10	(752)	(634)	(731)	(742)	(703)	(550)	(711)	(594)	(536)	(582)	(6,534)
Payroll	11	(31)	(600)	(14)	(623)	(14)	(1,638)	(14)	(619)	(14)	(777)	(4,344)
Utilities & Fuel	12	(599)	(70)	89	(628)	(220)	142	(64)	321	(692)	46	(1,677)
GST Remittance	13	-	-	(197)	-	-	-	-	(141)	-	-	(338)
SG&A	14	(53)	(66)	(103)	(114)	(786)	(186)	(68)	(110)	(150)	(78)	(1,714)
Restructuring Costs	15	(206)	(151)	(151)	(157)	(302)	(132)	(132)	(133)	(254)	(86)	(1,704)
Bank Charges	16	-	-	-	-	(144)	(13)	-	-	-	(13)	(171)
Capex	17	-	-	-	-	-	(25)	(25)	(25)	(25)	(50)	(150)
Transfer to Escrow with respect to the tax refund	7										(10,000)	(10,000)
Foreign Exchange Impact	18	25	-	-	-	-	-	-	-	-	-	25
Total Disbursements		(3,808)	(2,049)	(2,827)	(2,681)	(2,289)	(5,554)	(1,134)	(2,663)	(1,791)	(12,848)	(37,644)
Net Weekly Cash Flows		(100)	153	(372)	(1,079)	(52)	(3,503)	887	(1,089)	(4)	2,790	(2,368)
Inter-Company Transfers:												
Transfer from (to) US Companies	19	-	-	-	-	-	-	-	-	-	-	-
Transfers from (to) Footner	20	(71)	-	(6)	(56)	(20)	(13)	(20)	-	(76)	(13)	(275)
Total Inter-Company Transfers		(71)	-	(6)	(56)	(20)	(13)	(20)	-	(76)	(13)	(275)
Ending Bank Balance		29,393	29,546	29,167	28,033	27,960	24,445	25,312	24,223	24,144	26,921	26,921
Deduct: Restricted Cash	21	(431)	(431)	(431)	(431)	(431)	(431)	(431)	(431)	(431)	(431)	(431)
Ending Cash excluding Restricted Cash		28,962	29,115	28,737	27,602	27,530	24,014	24,881	23,793	23,713	26,491	26,491
Funds in Escrow with respect to the tax refund	7										10,000	10,000

In the Matter of the CCAA of Grant Forest Products Inc. Grant Alberta Inc., Grant Forest Products Sales Inc., and Grant U.S. Holdings GP. ("Grant" or the "Applicants")
Notes to the Unaudited Cash Flows Projection

Disclaimer:

In preparing this cash flow projection (the "Cash Flow Forecast"), the Applicants have relied upon unaudited financial information and the Applicants have not attempted to further verify the accuracy or completeness of such information. The Cash Flow Forecast includes estimates concerning the operations of the mills and additional assumptions discussed below with respect to the requirements. Since the Cash Flow Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Cash Flow Forecast period will vary from the Cash Flow Forecast, even if the assumptions materialize, and such variation may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

Overview:

The Cash Flow Forecast reflects cash flows from Grant's operations including inter-company transfers to and from the mill at Footner and Grant's U.S. operations. The Applicants with the assistance of the Monitor have prepared the Cash Flow Forecast based primarily on historical results and Grant's current business plan. Receipts and disbursements are denominated in both Canadian and US dollars; however the consolidated cash flow is presented in U.S. dollars. Canadian dollars are converted to US dollars at the exchange rate of CDN$1.08 = US$1.00.

The Cash Flow Forecast assumes that three of Grant's mills, specifically, Timmins, Footner and Clarendon continue to remain closed during the Cash Flow Forecast period. The Cash Flow Forecast also assumes that no interest will be paid to the lenders during the projection period.

Assumptions:

1) **Opening Balance:**
   This is the anticipated opening cash balance of the Applicants at the commencement of the stay extension period and includes funds held in Canadian dollars and U.S. dollars that were converted into U.S. dollars at the exchange rate noted above.

2) **Sales Receipts:**
   OSB Sales are calculated as the product of the projected volume and the projected price per unit. The projected volume is estimated based on Grant's historical volumes with a discount for the decline in sales as a result of the slower U.S. housing market as compared to previous years. The projected sales price per unit is

estimated using historical pricing data by Grant's sales department and market forecasts published by independent services. Further amounts estimated for freight and GST (for sales in Canada) are added to the unit price to arrive at the gross price per unit. Grant assumes that sales are collected in two weeks, based on recent historical run rates.

3) **Wood Sales Receipts:**
Wood sales receipts represent receipts from sales of wood not utilized in the production process. It is anticipated that such sales and the corresponding receipts will not be significant during the projection period.

4) **GST Refunds:**
Grant is typically in a net refund position as GST remittances are offset by potential input tax credits.

5) **Interest Income:**
Interest income is estimated at 0.25% of the previous month's bank balance and is projected to be received in the first week of each month.

6) **Other Receipts:**
Other Receipts include certain intercompany reimbursements and other miscellaneous receipts.

7) **Corporate Tax Refund :**
Grant anticipates receiving a tax refund of approximately $14.44 million based on its income tax return filed with the Canada Revenue Agency. Approximately $10.0 million of this anticipated tax refund is required to be held in escrow further to an endorsement of Justice Newbold on October 5, 2009, pending a Court decision on the motion of Mr. Peter Grant Sr. with respect to such amount.

8) **Payables – Wood:**
The cost of wood is estimated based on recent historical run rates and current production levels. In addition to the cost of wood, the company pays freight, which fluctuates slightly on a weekly basis.

9) **Freight:**
Freight costs are recovered from customers, however, Grant pays freight costs approximately a week after the sales are made and recovers these amounts from customers in two weeks, at the same time as payment for product as described in note 2 above.

10) **Other Payables:**
Other payables represent suppliers not included in other specific line items. Payables primarily include payments to suppliers for resin, wax, repairs & maintenance, packaging, and contract labour.

11) Payroll:
Payroll represents bonus and payroll costs including deductions for all executives and employees and is forecast based on historical run rates. Both salaried and hourly employees are paid bi-weekly through direct deposits. Grant has outsourced its payroll services to ADP. ADP is usually funded a few days prior to the payroll date. Included in the payroll line item are costs for benefits and pension.

12) Utilities & Fuel:
Utilities represent costs for electricity and natural gas. These costs are estimated based on recent historical run rates and production levels.

Fuel represents costs of refuelling both Grant owned vehicles and independent truckers that deliver wood to Englehart and finished goods to customers. The Cash Flow Forecast includes recoveries of fuel costs from freight transport companies who use Grant's fuel pump at Englehart and the highway card lock system.

13) GST Remittance:
GST Remittance represents anticipated GST remittances of GFPSI based on projected sales. Typically, Grant on a net consolidated basis is in a GST refund position; however, the sales company is in a payable position as it has no input tax credits.

14) SG&A:
SG&A represents costs for rent, property tax, equipment rentals, general repairs and maintenance, office supplies, travel and insurance.

15) Restructuring Costs:
Restructuring costs include costs related to Grant's advisors and their counsel and the Monitor and its counsel.

16) Bank Charges:
No interest is projected to be paid to the lenders during the projection period. This line item includes agency fees for the first lien lenders.

17) Capex:
Capex costs represent payments for anticipated capital expenditures.

18) Foreign Exchange Impact:
Foreign Exchange Impact represents the difference in the exchange rate between the opening cash balance in which Canadian dollars are converted to U.S. dollars at the exchange rate of CDN$1.089 = US$1.00 and the Cash Flow Forecast exchange rate of CDN$1.08 = US$1.00.

19) Transfer from (to) US Companies:

Represents intercompany funding between Allendale and Clarendon and the Applicants. During the projection period, it is currently projected that Allendale and Clarendon will not require funding from the Applicants.

20) Transfers from (to) Footner:

Represents intercompany funding between Footner and the Applicants. During the projection period, it is currently projected that Footner will require approximately $275,000 in funding from the Applicants.

21) Restricted Cash:

Represents approximately $431,000 of restricted cash held as a reserve for certain letters of credit issued by the Applicants.

Court File No. CV-09-824700CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. AND GRANT U.S. HOLDINGS GP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

FOURTH REPORT OF THE MONITOR, ERNST & YOUNG INC.
(Dated OCTOBER 8, 2009)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Sean Dunphy LSUC # 24941J
Tel: (416) 869-5662
Kathy Mah LSUC# 51077W
Tel: (416) 869-5652
Fax: (416) 947-0866

Solicitors for the Monitor, Ernst & Young Inc.

5565862 v1

TAB C

COURT FILE NO.: CV-09-8247-00CL
DATE: 20091013

SUPERIOR COURT OF JUSTICE – ONTARIO
COMMERCIAL LIST

RE: IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

Applicants

BEFORE: Justice Newbould

COUNSEL: Richard B. Swan, for Peter Grant Sr.

Kevin P. McElcheran, for Toronto-Dominion Bank, agent for 1st lien lenders

Katherine Mah, for the Monitor Ernst & Young Inc.

Jane O. Dietrich, for Grant Forest Products Inc., Grant Alberta Inc., Grant Forest Products Sales Inc., and Grant U.S. Holdings GP

DATE HEARD: October 5, 2009

ENDORSEMENT

[1] This is a motion by Peter Grant Sr. for an order, declaration or directions as appropriate in connection with an agreement under which Mr. Grant purchased for US $20 million from Grant Forest Products Inc. ("GFPI") US $10 million worth of income tax refunds due from the Canada Revenue Agency ("CRA") to GFPI in each of 2008 and 2009. His purchase of these expected tax refunds was to assist the cash flow of GFPI. He received the refund for 2008 but has not been provided with the necessary transfer document from GFPI under the agreement in

This is Exhibit "C" referred to in the affidavit of William Grant sworn before me, this 20th day of October 2009

A COMMISSIONER FOR TAKING AFFIDAVITS

order to receive the 2009 refund that is expected in the near future. He claims that GFPI is in breach of its agreement in not providing him with the transfer document and that the expected tax refund is to be received by GFPI in trust for him and is not an asset of GFPI.

[2] The Toronto-Dominion Bank ("TD") is the agent for the first lien lenders[1]. It opposes the application on the grounds that while GFPI has admittedly broken the agreement with Mr. Grant by not delivering to Mr. Grant a transfer document for the 2009 tax refund, to require the transfer document to now be given would accord preferential treatment to Mr. Grant over other creditors. TD claims that because the transfer has not been given, the tax refund when received by GFPI will not be an asset received and held in trust for Mr. Grant but will be an asset of the company.

[3] In my view it is clear that Mr. Grant is entitled to the relief he seeks to protect his right to the 2009 tax refund.

Background facts

[4] The Grant family has been in the lumber business in Ontario for several generations, going back to the 1880s. Mr. Grant founded the predecessor to GFPI in 1980, and took the company into the oriented strand board ("OSB") market with the opening of the company's first OSB mill in Englehart, Ontario in 1981. OSB is an alternative to plywood and is commonly used in residential construction. The company grew to become one of the three largest OSB producers in North America. Mr. Grant (and a Grant family trust known as Twin Lakes Trust) are the ultimate shareholders of GFPI.

[5] GFPI and the other applicants filed for and obtained protection under the CCAA by Initial Order of this Court dated June 25, 2009. Ernst & Young Inc. was appointed as Monitor. By order dated July 24, 2009, the initial stay was extended to October 15, 2009.

[6] As GFPI's financial performance began to decline in the OSB market, and particularly after GFPI and affiliates incurred significant bank debt to construct the two new South Carolina OSB mills, Mr. Grant became directly involved in steps to assist GFPI's cash-flow. Apart from

[1] At all material times, TD was the agent for both the first and second lien lenders. Now it is the agent only for the first lien lenders. The second lien lenders have not appeared on this motion or taken any position on it.

not being paid his salary for some time and not receiving preferred dividends of $6 million declared in 2006, and his retirement fund being under funded by $18 million, he has provided cash to GFPI.

[7] In July 2004, Mr. Grant caused a company controlled by him to loan $40 million on an unsecured basis to GFPI, and in October 2004 he caused that company to loan GFPI a further $10 million, again on an unsecured basis. These amounts have not been repaid. On behalf of that company, Mr. Grant signed postponement and subordination agreements subordinating these loans to the first and second lien lenders.

[8] In June 2008 Mr. Grant caused additional funds in the amount of $25 million to be advanced to GFPI. This amount is recorded in GFPI's accounts as a capital contribution.

Tax Refund Agreement

[9] As GFPI's financial performance declined in 2008, it was proposed that Mr. Grant assist the company's cash-flow by purchasing a portion of certain Canadian and Ontario tax refunds which GFPI expected to receive in 2008 and 2009.

[10] The terms of the first and second lien credit agreements permitted asset sales each year by GFPI out of the ordinary course of business, without the consent of the lenders and without the proceeds being paid to the lenders, on certain conditions, one being that the total amount sold each year could not exceed US$10 million. As well, no security could be given by the company. The tax refund agreement was carefully drawn so that it would comply with the requirements of these credit agreements. Whether the lenders agreed to the terms of the agreement is a matter of some debate, but it is clear that the lenders and their solicitors were quite involved in its drafting. It is common ground that the tax refund complied with the credit agreements and thus there was no need for the lien agents to canvass the lending syndicates for any consent. Mr. Montgomery, a vice-president and director of TD, confirmed that on his cross-examination.

[11] The concept was that Mr. Grant would pay US$20 million to GFPI in March 2008 to purchase a portion of GFPI's 2008 and 2009 tax refunds, with the purchased portions of the tax refunds amounting to US$10 million in each of 2008 and 2009. This would assist the company

with its immediate cash-flow but ensure that Mr. Grant would ultimately receive the purchased portions when the 2008 and 2009 tax refunds were paid by the government. The agreement was structured so that while the entire US $20 million was paid in 2008, no more than US $10 million of the tax refund asset was sold in 2008 and the balance sold was to be in 2009.

[12] From Mr. Grant's perspective, the agreement provided that once GFPI received the 2008 and 2009 tax refunds from the government, GFPI would be obliged to hold the portions of the refunds which he had purchased in trust for him and then pay them out to him or as he directed. Whether this trust arrangement was effected for the 2009 tax refund is the central issue on this motion.

[13] The tax refund agreement provided for the sale of the tax refunds in two tranches, the first on March 31, 2008 and the second on January 2, 2009. It provided for the payment of the entire purchase price on March 31, 2008, with the payment for the 2009 tax refund being by way of deposit. The agreement provides:

> Section 2.01 <u>Agreement of Purchase and Sale</u>
>
> Subject to the provisions of this Agreement, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase from the Vendor:
>
> (a) the Sold 2008 Refund on March 31, 2008; and
>
> (b) the Sold 2009 Refund on January 2, 2009
>
> Section 3.02 <u>Payment of Purchase Price</u>
>
> The Purchaser shall pay the purchase prices to the Vendor by certified cheque, bank draft or wire transfer of immediately available funds to an account specified by the Vendor as follows:
>
> (a) The Purchaser shall pay the 2008 Purchase Price to the Vendor on March 31, 2008 at the 2008 Closing; and
>
> (b) The Purchaser shall pay the 2009 Purchase Price Deposit to the Vendor on March 31, 2008 at the 2008 Closing.

[14] The agreement provides that Mr. Grant receives no interest in the 2009 tax refund until the company delivered to him a transfer of the 2009 refund. It provided:

> Section 5.02 <u>No Interest of Purchaser in Sold 2009 Refund Until 2009 Closing</u>
>
> The parties agree, notwithstanding any other provision of this Agreement or any other right or purported right of the Purchaser, that the Purchaser does not acquire any right, title or interest in the Sold 2009 Refund, and the Vendor does not sell, assign or transfer any right, title or interest in the Sold 2009 Refund until the Vendor delivers to the Purchaser at the 2009 Closing, the transfer referred to in Section 7.04(a).
>
> Section 7.04 <u>Deliveries or Payments on 2009 Closing by the Vendor</u>
>
> The Vendor shall deliver or pay to the Purchaser at the 2009 Closing, in form and substance satisfactory to the Purchaser, acting reasonably:
>
> (a) a transfer by the Vendor to the Purchaser of the Sold 2009 Refund.

[15] The provision in section 5.02 that Mr. Grant was not to have any interest in the 2009 tax refund until the company delivered the transfer to him on January 2, 2009 was to make clear that the 2009 tax refund sale could not be considered a disposition in 2008 contrary to the lien credit agreements. Such a provision was said by the TD solicitor who was dealing with the draft agreement to be "critical".

[16] The trust provisions that are relevant to this motion differentiate between the years 2008 and 2009. They provide:

> Section 5.05 <u>Sold 2008 Refund Held in Trust by Vendor</u>
>
> The Vendor shall hold in trust for the Purchaser, keep segregated from any other funds, accounts or assets of the Vendor and pay to the Purchaser any amount of the Sold 2008 Refund received by the Vendor after the completion of the 2008 Closing.
>
> Section 5.06 <u>Sold 2009 Refund Held in Trust by Vendor</u>
>
> The Vendor shall hold in trust for Purchaser, keep segregated from any other funds, accounts or assets of the Vendor and pay to Purchaser any amount of the Sold 2009 Refund received by the Vendor after the completion of the 2009 Closing.

[17] It is to be noted that the trust for 2009 is to attach to the tax refund received by the company from CRA "after the completion of the 2009 Closing". The "2009 Closing" is defined:

> "2009 Closing" means the closing of the purchase and sale of the Sold 2009 Refund on January 2, 2009.

[18] The agreement also provided that on each of the 2008 and 2009 closings, a partial discharge of the security held by the first and second lien agents and a release of any interest they may have in the sold refunds would be provided to Mr. Grant. This would appear to have been a bootstrap measure to give Mr. Grant some comfort. If the tax refunds were to be received by GFPI in trust for Mr. Grant, as was clearly the intent of the agreement, they would not be assets of the company subject to the lenders security. Moreover, the lenders security permitted these asset sales free of the security without the proceeds being paid to the lenders.

[19] Thus scheme of the tax refund agreement was quite straightforward. On January 2, 2009 a transfer was to be delivered to Mr. Grant delivering him his interest in the 2009 tax refund to be received by GFPI up to the amount of US $10 million. When the refund was received by GFPI, it was to be received and held by GFPI in trust for him. It was not to be an asset of GFPI or subject to the security of the company's lenders.

[20] This scheme of the agreement was well-known by TD, the agent for the first and second lien lenders as is evident from an internal TD credit memorandum prepared by Mr. Montgomery on March 28, 2008, three days before the 2008 closing. That memorandum included the following:

> The capital will be injected in a manner that does not require any consents from the lenders.
>
> The proposed structure is summarized as follows:
>
> > i) on [March 31/08] a related company outside our the restricted group which we understand will be a holdco above our Borrower (the "Purchaser") will acquire US$20MM of the Borrower's 2008 and 2009 tax refunds;
> >
> > ii) on [March 31/08] the Borrower will receive US$20MM from the Purchaser consisting of:

a) US$10MM on the sale of a portion of the Borrower's 2008 tax refunds received between Sept 1/08 – Dec 31/08;

b) US$10MM deposit against the sale of a portion of the Borrower's 2009 tax refunds.

iii) on Jan 2/09 the Borrower will sell $10MM of its 2009 tax refund received between Sept 1/09 to Dec 31/09 to the Purchaser (consideration coming from (ii) (b));

iv) the Agent (1st and 2nd lien) will provide the Purchaser with a partial discharge of its security with the respect to: (ii)(a) in March/08, and (ii)(b) in Jan/09;

v) the Purchaser will receive the proceeds of the monetized 2008 tax refunds in late 2008, and the proceeds of the monetized 2009 tax refunds in late 2009; the Borrower may direct CRA to pay the monetized 2008 and 2009 refunds directly to the Purchaser, or alternatively, to the extent the Borrower receives the monetized tax refunds from CRA, the Borrower will agree to hold in trust and segregate the proceeds of the monetized refunds for the Purchaser.

[21] While TD was not a party to the tax refund agreement, it is quite evident that it understood that it would provide a partial discharge of its security in March 2008 and in January 2009.

[22] The argument now made on behalf of TD is that the 2009 closing has not taken place because the company failed to deliver the transfer document it was required to deliver to Mr. Grant on January 2, 2009 and therefore the tax refund once received will not be subject to a trust in favour of Mr. Grant.

Post-agreement events

[23] The 2008 Closing as defined in the tax refund agreement took place on March 31, 2008. At that time Mr. Grant paid to GFPI US$10 million to purchase the 2008 tax refund and at the same time paid a further US$10 million to purchase the 2009 tax refund. The latter amount was paid as a deposit under the section 3.02(b) of the agreement. GFPI had immediate use and benefit of the US$20 million in funds paid to it. In exchange, Mr. Grant received a transfer

acknowledgment and partial discharges from the first and second lien agents in respect of the 2008 refund. Mr. Montgomery of TD said on his cross-examination that the discharges were freely given because the lenders were asked to give them, and that there was no need to canvass the lending syndicates to do so.

[24] Later in 2008, after GFPI received its 2008 tax refund from CRA, Mr. Grant received from GFPI approximately US$10 million in respect of his purchase of the 2008 tax refund.

[25] The 2009 closing was to take place on January 2, 2009. However GFPI failed to deliver the transfer required under s. 7.04(a). It is common ground that GFPI is in breach of its agreement for failing to do so.

[26] It is quite apparent from the evidence that it was the position of the lenders that influenced the company to take the position that it did, and that the company felt it was between a rock and a hard place. GFPI was running into financial problems and anticipated being in default of its borrowing covenants by the end of the first fiscal quarter for 2009. There is some evidence in an e-mail sent by Mr. Peter Lynch of GFPI to Mr. Grant's solicitors and others, (i) that TD, which was the agent at the time for both the first and second lien lenders, advised that it would not provide discharges of their security without the consent of the requisite number of lenders in each syndicate, which was different from the position taken by TD regarding the 2008 tax refund that the consent of the members of lending syndicate was not required, and (ii) that TD indicated to Mr. Lynch that it would not be supportive of the request for a discharge of its security.

[27] Mr. Montgomery on his cross-examination made it clear that the position of TD was that in order that GFPI would have the support of TD in a restructuring, the US$10 million should not be paid to Mr. Grant. He said on his cross-examination:

> "A. I do know from Bill [O'Connor, a V-P at TD] that this -- that this would have been our position.
> Q. What did Bill tell you in this regard?
> A. That as -- you know, in order to -- in order to continue to support the company and, you know, put a structure in place that would allow it to continue to operate, that the lenders would look for the 10 million to remain in the company --

Q. Okay.
A. -- in order to induce the lenders to continue to fund, or to continue to forebear, I guess, or continue to re -- to restructure the credit facilities to allow it to continue to operate."

[28] When Mr. Montgomery was involved in the drafting of a term sheet for a proposed refinancing of GFPI he made sure that there was included in the term sheet a negative covenant that the 2009 tax refund not be paid to Mr. Grant. He stated in an internal e-mail at TD "if we restructure we would want to make sure that shareholders do not take payment on this "deposit". Mr. Grant never agreed to this.

[29] On June 19, 2009 Mr. Grant's solicitors wrote to GFPI demanding that GFPI deliver the transfer document required for the 2009 tax refund no later than 5:00 p.m. on June 22, 2009. The letter further demanded that the partial discharges and releases from the first and second lien agents be sought by GFPI from the lenders and provided to Mr. Grant no later than 5:00 p.m. on June 22, 2009. The letter stated that if these discharges and releases from the first and second lien agents were not provided, Mr. Grant might waive these conditions that were inserted in the agreement for his benefit. Section 6.03 of the agreement provided that conditions in favour of Mr. Grant could be waived by him in his sole discretion. The obvious reason for the urgency of the letter and for the demand that these documents be delivered by June 22, 2009 was that it was known that GFPI was about to file for protection under the CCAA, which protection was obtained in the Initial Order made on June 25, 2009.

Issues

[30] TD takes the position that under section 5.02 of the tax refund agreement, Mr. Grant did not acquire any right or interest in the 2009 tax refund as that section provided he would not receive such a right until GFPI delivered a transfer document to Mr. Grant at the 2009 closing that was to take place on January 2, 2009. As that transfer was not delivered, the position of TD is that Mr. Grant therefore has not acquired any interest in the 2009 tax refund.

[31] Further, TD takes the position that the trust provision requiring GFPI to hold the 2009 tax refund in trust once received from CRA has not come into force because that section provides for such a trust for a 2009 tax refund that is received after the completion of the 2009 closing. TD

asserts that because the 2009 closing did not take place as there was no delivery of a transfer from GFPI to Mr. Grant, the trust provision does not yet arise. It is common ground that the 2009 tax refund to come from CRA has not yet been received by GFPI.

[32] The position of Mr. Grant is that GFPI has a trust obligation to hold the 2009 tax refund in trust for Mr. Grant and that it cannot rely upon its own failure to deliver a transfer document to Mr. Grant on January 2, 2009 to argue otherwise. Mr. Grant relies upon the equitable doctrine that equity considers done what ought to be done.

[33] Mr. Grant further contends that it is open to a court to now compel GFPI to deliver the transfer document that was to have been delivered on January 2, 2009, thus giving Mr. Grant his right to the 2009 tax refund under section 5.02. He takes the position that delivery of the transfer now by GFPI would mean that once the 2009 tax refund is received from CRA, it will be impressed with a trust in his favour. TD takes the position that making an order requiring GFPI to now deliver a transfer to Mr. Grant would amount to a preference in favour of Mr. Grant over other creditors of GFPI.

Analysis

[34] There is no question but that GFPI has breached its obligation to deliver the transfer to Mr. Grant on January 2, 2009. It is also clear that while TD understood at the outset that the 2009 tax refund when received by the company would be held in trust for Mr. Grant and that TD would provide a discharge of its security at that time, TD has made clear that it will not deliver any discharge of its security. The fact that TD contends that it was not asked by GFPI to deliver a discharge of its security is, in my view, neither here nor there. It was made quite clear by TD to GFPI that if there was to be a restructuring, the US $10 million should stay in the company.

[35] The issue is what right Mr. Grant has, if any, to receive the 2009 tax refund.

[36] There was no condition in the tax refund agreement that was required to be fulfilled before the transfer was to be delivered to Mr. Grant on January 2, 2009, nor any test or judgment call of any kind to be made by GFPI. The only purpose in having half of the US $20 million tax refund being purchased by Mr. Grant to be a purchase in 2009 was to stay onside the lending

agreements which permitted only US $10 million in assets to be sold in any year out of the ordinary course of business. The 2009 closing to take place on January 2, 2009 was thus a technical, albeit important, provision that was to be automatically carried out by GFPI. Nor was the obligation of GFPI to deliver the transfer in any way conditional on the lenders providing a release of their security.

[37] It would be completely inequitable, in my view, for GFPI to take advantage of its own breach in failing to deliver the transfer to Mr. Grant and then contend that because of that failure, its requirement to hold the funds received from CRA in trust under s. 5.02 does not arise because the 2009 closing has not taken place, i.e., for GFPI to contend that as it is only funds received from CRA "after the completion of the 2009 Closing" that are to be held in trust, and if the funds are received before the closing has taken place they are not subject to the trust in favour of Mr. Grant. That was not at all the intent of the agreement. GFPI does not argue this, as it takes no position on the motion by Mr. Grant. TD however does. Mr. McElcheran said in argument that TD is taking this position on behalf of GFPI.

[38] In my view, the principle that equity considers done what ought to be done is applicable and the transfer by GFPI of the 2009 tax refund to Mr. Grant that was to occur on January 2, 2009 is to be treated as if it did take place.

[39] The principle is well known and of some antiquity. It was explained in *Bliss v. Doyle* (1983), 44 O.R. (2d) 129 by Krever J. (as he then was) by the following:

> In Snell's Principles of Equity, 27th ed. (1973), one finds the following explanation of the maxim at p. 40:
>
>> This maxim has its most frequent application in the case of contracts. Equity treats a contract to do a thing as if the thing were already done, though only in favour of persons entitled to enforce the contract specifically and not in favour of volunteers. Agreements for value are thus often treated as if they had been performed at the time when they ought to have been performed, with the same consequences as if they had then been completely performed. For example, a person who enters into possession of land under a specifically enforceable agreement for a lease is regarded in any court which has jurisdiction to enforce the agreement as being in the same position as between himself and the other party to the agreement as if the lease had actually been granted to him.

> Other examples of the maxim will be found in the enforcement of an imperfect trust made for value, the qualified trust for a purchaser imposed by equity upon the vendor, the rule in *Howe v. Earl of Dartmouth*, and the doctrine of conversion.

[40] The maxim was applied in *Wood v. Guarantee Co. of North America* (1975), 10 O.R. (2d) 661. In that case an insurer failed to issue a policy that its agent had committed it to issue. The insurer sought to avoid an obligation under the Judicature Act to pay interest by way of damages on an insurance policy by contending that the policy had not been issued. Southey J. rejected the argument and stated:

> The present action is not an action on a policy of insurance, because no policy was in fact issued by the insurer. The insurer, however, was under an obligation to issue a policy of insurance in accordance with the agreement made with the plaintiff and it would be a strange result, indeed, if the insurer could avoid liability for interest in the nature of damages under the Judicature Act because of its failure to issue a policy. The plaintiff could have sued for specific performance of the contract of insurance and thereby forced the Guarantee Company to issue a policy. I think I am entitled under s. 18(1) of the Judicature Act to apply the equitable principle that equity looks on that as done which ought to be done (14 Hals., 3rd ed., p. 532), and proceed in this case as though a policy had been issued.

[41] It was contended on behalf of TD that to apply this equitable maxim flies in the face of s. 5.02 of the tax refund agreement that provides that Mr. Grant obtains no interest in the 2009 tax refund before the vendor delivers the transfer at the closing on January 2, 2009 and, that as the transfer was not delivered, it would be effectively re-writing the agreement to provide for it now. I do not agree. The application of the maxim does not mean that Mr. Grant will have received his interest in the second half of the tax refund in 2008. The application of the maxim results in the court proceeding as if the transfer took place on January 2, 2009, which is what the agreement contemplated.

[42] As the transfer is thus taken to have occurred on January 2, 2009, the trust obligation imposed on GFPI under s. 5.06 of the agreement is effective and requires GFPI to hold for Mr. Grant US $10 million of the tax refund for 2009 when it is received from CRA. Moreover, under s. 5.04 of agreement, Mr. Grant is entitled to direct the CRA to deliver that amount to him rather than to GFPI. S. 5.04 provides in part:

> Either party may, after the delivery to the Purchaser of the transfer of the Sold 2009 Refund referred to in Section 7.04(a), direct CRA, the Finance Minister and any other appropriate person to pay the Sold 2009 Refund to the Purchaser.

[43] I do not think that the lack of discharges from TD of the first and second lien lenders affects the substance of the rights of Mr. Grant to the 2009 tax refund. The obligation in the tax refund agreement to deliver the discharges on the 2009 closing was that of GFPI, and thus GFPI was required under the agreement to do what was necessary to acquire those discharges from TD. Under s. 5.02 of the agreement, Mr. Grant was to acquire his title or ownership to the 2009 tax refund on January 2, 2009 solely by the transfer being delivered to him. The failure of GFPI to obtain the discharges from TD could not affect that delivery of title from GFPI to Mr. Grant. At most, if the lenders had security over the 2009 tax refund, it would mean that Mr. Grant's ownership of that asset was subject to the lenders' security. I do not see how the failure of GFPI to obtain discharges from the lenders for delivery to Mr. Grant could affect the trust provision in s. 5.06. It would amount to GFPI taking advantage of its own breach of agreement to argue there was no closing because it did not provide the discharges from the lenders to Mr. Grant.[2]

[44] In my view, and I so find, as the transfer from GFPI to Mr. Grant is deemed at equity to have been delivered on January 2, 2009, the trust provisions of s. 5.06 mean that if the tax refund due to Mr. Grant is received by GFPI, it is to be held in trust for him and the first and second lien lenders do not have any security over it.

[45] I do not agree with the assertion by TD that to now order GFPI to deliver a transfer of the 2009 tax refund would amount to a preference in favour of Mr. Grant. It would not be providing Mr. Grant as an unsecured creditor with a payment from the company's assets ahead of other creditors. Rather it would be effecting delivery to him of an asset belong to him. It is not the company's asset.

[46] Moreover, while Mr. McElcheran contends that the tax recovery is not something that TD is asking for itself, but something TD is asking for GFPI, and that TD as agent for the first lien

---

[2] TD does not argue that the lack of discharges from the first and second lien holders prevents the trust provisions of s. 5.06 from being applicable. It relies on the failure of GFPI to deliver the transfer on January 2, 2009 for its contention that the 2009 closing did not take place.

lenders is not trying to scoop the tax refund, this appears inconsistent with the position taken by TD in August of this year on the motion regarding the validity of the KERP payment for Mr. Lynch, which TD supported. TD relied on marketing information provided by the Monitor and Mr. Stephen to the Court on a confidential basis that the secured creditors will likely incur substantial shortfalls and that there likely will be no recovery for the unsecured creditors. If that is the case, the result of TD being successful in its position on this motion would be a benefit to its position as agent for the first lien lenders.[3] This would be quite inconsistent with the lending agreements which expressly permitted the sale of these tax refunds free of the security of the lenders.

[47] Whether the result in favour of Mr. Grant is by reason of the application of the equitable maxim that equity considers done what ought to be done or by reason of an order that GFPI now deliver a transfer to Mr. Grant, in substance the result would be the same. I do not think that the equities of the situation should be affected by the form of the relief granted. If requested, I would order the transfer to Mr. Grant by GFPI to be now made under s. 5.02 of the agreement, but I do not see the need for that to be done.

Conclusion

[48] I declare:

(a) The transfer to Mr. Grant of the 2009 tax refund due to him under s. 5.02 of the tax refund agreement has in equity taken place as of January 2, 2009 and that Mr. Grant has acquired full right, title and interest in the tax refund as of that date. Mr. Grant is entitled if he wishes to receive a transfer document from GFPI under s. 5.02 effective January 2, 2009.

---

[3] The fourth report of the Monitor dated October 8, 2009 contains a cash flow projection from September 28, 2009 to December 6, 2009 which the Monitor states indicates that the applicants will have sufficient liquidity to sustain ordinary course operations during the projection period. This statement projects US 14,444 million being received as a corporate tax refund in the week ending December 6, 2009 and US $10 million of that being transferred to an escrow in accordance with my interim ruling at the conclusion of the argument on this motion. That is, the refund due to Mr. Grant is not necessary for the applicants' cash flow for the period, at the end of which the projected cash position of the applicants will be a positive US $26,491 million.

(b) Mr. Grant is also entitled if he wishes to direct CRA, the Finance Minister or any other appropriate person under s. 5.04 of the tax refund agreement to pay the tax refund due to him directly to him.

(c) If the 2009 tax refund due Mr. Grant is received by GFPI, it will be received by GFPI in trust for Mr. Grant and GFPI shall be obliged to forthwith pay it to Mr. Grant.

[49] Mr. Grant is entitled to his costs from TD. If not agreed, brief submissions in writing with a draft bill of costs may be made on his behalf within 10 days and TD shall have 10 days to reply.

NEWBOULD J.

DATE: October 13, 2009

TAB D

Court File No. CV-09-8247-00CL

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

NOTICE OF MOTION
(motion for leave to appeal)

THE TORONTO-DOMINION BANK ("TD") will make a motion which will be heard by the court in writing 36 days after service of TD's motion record, factum and transcripts, if any, or on the filing of TD's reply factum, if any, whichever is earlier (unless otherwise directed by order of a judge of this court).

PROPOSED METHOD OF HEARING: The motion is to be heard in writing (unless otherwise directed by order of a judge of this court).

THE MOTION IS FOR:

1. an order granting leave to appeal the order of the Honourable Justice Newbould dated October 13, 2009;

2. costs of this motion; and

This is Exhibit "D" referred to in the affidavit of William O'Connor sworn before me, this 20th day of October 2009

A COMMISSIONER FOR TAKING AFFIDAVITS

3. such further and other relief as this Honourable Court considers just.

THE GROUNDS FOR THE MOTION ARE:

GFPI and its CCAA proceedings

1. Grant Forest Products Inc. ("GFPI") is in the lumber business. It was founded by and is controlled by the responding party Peter Grant Sr. On June 25, 2009, GFPI filed for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act* (the "CCAA"). The CCAA proceedings are ongoing.

2. At present, the stay of proceedings under the CCAA has been extended to December 1, 2009, primarily in order to allow a process for the marketing of GPFI's assets to be advanced.

Mr. Grant's motion

3. On October 5, 2009, Mr. Grant brought a motion before the Honourable Justice Newbould for an order in connection with an agreement (the "Tax Refund Agreement") under which he purchased from GFPI $20 million U.S. in tax refunds to become due from the Canada Revenue Agency (the "CRA") to GFPI in 2008 and 2009. The Toronto-Dominion Bank ("TD") opposed the motion. TD is agent for a lending syndicate which holds first ranking security over the assets of GFPI.

4. On October 13, 2009, Justice Newbould issued an endorsement granting Mr. Grant the relief that he was seeking. Specifically, Justice Newbould held that:

(a) pursuant to the Tax Refund Agreement, Mr. Grant has acquired full right, title and interest in the tax refunds which are owing by the CRA to GFPI in 2009; and

(b) if GFPI receives a 2009 tax refund, the first $10 million U.S. will be received in trust for Mr. Grant and GFPI will be obliged to pay it forthwith to Mr. Grant.

Justice Newbould's holding

5. In 2008, GFPI was experiencing financial problems. It was proposed the Mr. Grant assist GFPI's cash flow by purchasing certain federal and Ontario tax refunds which GFPI expected to receive in 2008 and 2009.

6. Pursuant to the terms of GPFI's agreements with its lenders, referred to as the first and second lien credit agreements, GPFI was permitted to sell assets outside the ordinary course of business without lender consent and without paying the proceeds to the lenders, but only on the condition that dispositions (as broadly defined in the Credit Agreements) of the Tax Refunds not exceed $10 million U.S. per year. The Tax Refund Agreement was carefully drawn as to comply with this covenant.

7. Pursuant to the Tax Refund Agreement, Mr. Grant paid GFPI $20 million U.S. in March 2008, in exchange for the promise of GFPI to convey $10 million U.S. of GFPI's 2008 tax refund at the 2008 closing and $10 million of its 2009 tax refund to be transferred at the 2009 closing.

8. In order to comply with the covenant in the credit agreements, the Tax Refund Agreement made it clear that the acquisition of GFPI's 2009 tax refund was not to occur until at tranfer of the 2009 tax refund was delivered at the 2009 Closing which as scheduled to occur on

January 2, 2009, and that until the transfer of the 2009 refund was delivered, Mr. Grant had no interest in GFPI's 2009 tax refund:

> "Section 2.01 Agreement of Purchase and Sale
>
> Subject to the provisions of this Agreement, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase from the Vendor: ...
>
> (b) the Sold 2009 refund on January 2, 2009."
>
> "Section 5.02 No Interest of Purchaser in Sold 2009 Refund Until 2009 Closing
>
> The parties agree, notwithstanding any other provision of this Agreement or any other right or purported right of the Purchaser, that *the Purchaser does not acquire any right, title or interest in the Sold 2009 Refund*, and the Vendor does not sell, assign or transfer any right title or interest in the Sold 2009 Refund *until the Vendor delivers to the Purchaser at the 2009 Closing, the transfer referred to in Section 7.04(a)*." [Emphasis added.]

9. The Tax Refund Agreement expressly held that, *once the closing of the purchase of the 2009 tax refunds was completed*, GFPI would hold $10 million U.S. of its 2009 tax refund in trust for Mr. Grant:

> "Section 5.06 Sold 2009 Refund Held in Trust by Vendor
>
> The Vendor shall hold in trust for Purchaser, keep segregated from any other funds, accounts or assets of the Vendor and pay to Purchase any amount of the Sold 2009 Refund received by the Vendor *after the completion of the 2009 Closing*." [Emphasis added.]

"2009 Closing" was defined to mean "the closing of the purchase and sale of the Sold 2009 Refund on January 2, 2009".

10. By December, 2008, GFPI was in serious financial difficulty and anticipated being in default of its borrowing covenants by the end of the first quarter of 2009. In order to secure the

support of its lenders for a restructuring, GFPI decided not to close the sale of the 2009 tax refunds to Mr. Grant.

11. Despite the clear language of the Tax Refund Agreement that a trust did not arise until the 2009 Closing had been completed, and despite the undisputed fact that the 2009 Closing had not occurred, Justice Newbould found that the trust obligation under Section 5.06 was effective. He so found by applying "the principle that equity considers done what ought to be done". He used that "principle" to treat the 2009 Closing as if it did take place, even though it had not.

12. Justice Newbould's holding has significant implications both for the interpretation of commercial agreements generally and for the interpretation of such agreements within insolvency proceedings:

(a) **Importance for the interpretation of commercial agreements generally.** Is it correct that the equitable principle that equity considers done what ought to be done can override the express and unambiguous language of an agreement entered into by sophisticated commercial parties?

(b) **Importance for insolvency practice.** Were it not for the trust Justice Newbould has recognized, Mr. Grant would be an unsecured creditor of GFPI for $10 million U.S. and would receive the same treatment as all other unsecured creditors. With the trust recognized, Mr. Grant will get 100 cents on the dollar even before GFPI's secured creditors receive anything. This reality gives rise to the following important question for insolvency practice in Ontario: Can a structure like the Tax Refund Agreement be used to elevate the claim of an unsecured creditor to a trust claim guaranteeing recovery of 100 cents on the dollar?

13. In addition to being of significance to insolvency practice in Ontario and to commercial law generally, the issue is of significance to the proceeding itself. At stake is $10 million U.S., which is a considerable sum of money, particularly for an insolvent corporation needing as many resources as possible to attempt to achieve a restructuring.

14. The appeal is *prima facie* meritorious. Justice Newbould's ruling undermines the certainty of commercial agreements and grants a preference to an unsecured creditor. The correctness of this ruling is doubtful and ought to be reviewed by this court.

15. The appeal will not unduly hinder the progress of the proceeding. TD is willing to expedite this motion for leave to appeal, and the appeal itself if leave to appeal is granted. GFPI's current stay of proceedings is in place until December 1, 2009 in order to permit a process for the marketing of GFPI's assets to unfold. Subject to the availability of time in this court, the leave motion and, if leave is granted, the appeal itself can be dealt with prior to December 1, 2009, which means that the proceedings in this court will not interfere in any way with the ongoing restructuring.

16. TD relies on section 14 of the CCAA and Rule 61.03.1 of the *Rules of Civil Procedure*.

17. TD also relies on such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED at the hearing of the motion:

1. the record before Justice Newbould; and

2. such further and other materials as counsel may advise and this Honourable Court may permit.

October 20, 2009

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Kevin P. McElcheran LSUC#: 22119H
Tel: (416) 601-7730
Fax: (416) 868-0673

Lawyers for The Toronto-Dominion Bank

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC. et al.

Court File No. CV-09-8247-00CL

COURT OF APPEAL FOR ONTARIO

NOTICE OF MOTION

McCarthy Tétrault LLP
Suite 5300, P.O. Box 48
Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Kevin P. McElcheran LSUC#: 22119H
Tel: (416) 601-7730
Fax: (416) 868-0673

Lawyers for The Toronto-Dominion Bank

#749296 v. 1

TAB E

Antonellis, Sonia

From: Sean Dunphy [SDunphy@stikeman.com]
Sent: Friday, October, 16, 2009 2:28 PM
To: McElcheran, Kevin
Cc: 'alex.f.morrison@ca.ey.com'; 'ross.walker@fmc-law.com'
Subject: Appeal re Grant Tax Refunds

Kevin - we are advised that one of the tax refunds (approx $1.4mm) has arrived. The Company is in the process of endorsing over to P. Grant Sr. The Monitor has asked the company to hold off for 48hrs (till close on Tuesday) to give you a fair chance to seek a stay if so advised. We were not aware the receipt of refunds was this imminent, so there would appear to be less time to consider your course of action than you may have expected. Please let us know as soon as you can what your intentions are.

Sean Dunphy
Tel.: (416) 869-5662
Cel.: (647) 988-4029
Fax: (416) 947-0866
sdunphy@stikeman.com

STIKEMAN ELLIOTT LLP Barristers & Solicitors 5300 Commerce Court West
199 Bay Street
Toronto, ON, Canada M5L 1B9
Tel: (416) 869-5500
www.stikeman.com

TORONTO MONTRÉAL OTTAWA CALGARY VANCOUVER NEW YORK LONDON SYDNEY

This is Exhibit "E" referred to in the affidavit of William Connel
sworn before me, this 20th
day of October 2009
[illegible]
A COMMISSIONER FOR TAKING AFFIDAVITS

TAB # 7.

Court File No. 09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*; R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP (the "Applicants")

AFFIDAVIT OF PETER J. GRANT SR.
(Sworn September 8, 2009)

I, **Peter J. Grant Sr.**, of the City of Temiskaming Shores, in the Province of Ontario, businessman, **MAKE OATH AND SAY:**

1. I am the Chairman and Chief Executive Officer of the applicant Grant Forest Products Inc. ("GFPI"). As such, I have personal knowledge of the matters to which I hereinafter depose. Where matters are not based on my personal knowledge, I have stated the source of my information and in all such cases verily believe it to be true.

BACKGROUND

2. My family has been in the lumber business in Ontario for several generations, going back to the 1880s. I founded the predecessor to GFPI in 1980, and took the company into the oriented strand board ("OSB") market with the opening of the company's first OSB mill in Englehart, Ontario in 1981. OSB is an alternative to plywood and is commonly used in residential

construction. The company grew to become one of the three largest OSB producers in North America.

3. I (and a Grant family trust known as Twin Lakes Trust) are the ultimate shareholders of GFPI.

4. Background information in respect of GFPI and affiliated companies is set out in the affidavit of Peter Lynch, the Executive Vice-President and Secretary of GFPI, sworn June 22, 2009 and filed on the application for an initial order in this proceeding. I have reviewed that affidavit in respect of this motion. For the sake of efficiency, I do not propose to repeat what is stated in that affidavit concerning the corporate background and structure, although I should not necessarily be taken to adopt everything stated in that affidavit.

MY RECENT EFFORTS TO ASSIST GFPI FINANCIALLY

5. As GFPI's financial performance began to come down from 2004 historic highs in the OSB market (and particularly after GFPI and affiliates incurred significant bank debt to construct the two new South Carolina OSB mills), I became directly involved in steps to assist GFPI's cash-flow.

6. In July 2004, I caused 1308406 Ontario Inc. ("1308406"), which is controlled by me, to loan $40 million on an unsecured basis to GFPI, and in October 2004 I caused 1308406 to loan GFPI a further $10 million, again on an unsecured basis. These amounts have not been repaid. On behalf of 1308406, I have signed postponement and subordination agreements (subordinating these loans to the First Lien Credit Agreement and Second Lien Credit Agreement referenced in Mr. Lynch's initial affidavit).

7. In 2006 GFPI declared preferred dividends in the amount of $6 million in favour of Grant Forest Products Corp., which I control. These dividends have not been paid by GFPI.

8. In order to provide further financial assistance to GFPI, in June 2008 I caused additional funds in the amount of $25 million to be advanced to GFPI. This amount is recorded in GFPI's accounts as a capital contribution.

9. Although I serve as Chairman and CEO of GFPI, I have not received a salary from GFPI for many months.

10. I am informed by GFPI's pension consultant, Roy Craik, and believe that an Executive Retirement Plan established for my benefit by GFPI is underfunded to the extent that it would require a contribution of approximately $18 million for the Plan to provide me with the retirement income I was to receive under that Plan at age 70. No contributions have been made to the funding of that Plan for many months.

TAX REFUND PURCHASE AND SALE AGREEMENT

11. As GFPI's financial performance declined in 2008, it was proposed that I might assist the company's cash-flow by purchasing a portion of certain Canadian and Ontario tax refunds which GFPI expected to receive in 2008 and 2009.

12. The concept was that I would pay US$20 million to GFPI in March 2008 to acquire a portion of GFPI's 2008 and 2009 tax refunds, with the purchased portions of the tax refunds amounting to approximately US$10 million in each of 2008 and 2009. This would assist the company with immediate cash-flow but ensure that I would ultimately receive the purchased portions when the 2008 and 2009 tax refunds were paid by the government.

13. The arrangement was such that once GFPI received the 2008 and 2009 tax refunds from the government, it would be obliged to hold the portions of the refunds which I had purchased (approximately US $10 million each year) in trust for me and then pay them out to me or as I directed.

14. The arrangement was principally devised and structured by Mr. Lynch and Ross Walker, a solicitor and partner of Fraser Milner Casgrain, which firm prepared the Agreement referred to below in paragraph 16.

15. The Board of Directors of GFPI approved the tax refund purchase arrangement at a directors meeting held on March 27, 2008. Attached as **Exhibit "A"** is a copy of the minutes of the directors meeting of March 27, 2008, together with the Schedule "A" thereto which outlines the transaction approved by the Board.

16. The Tax Refund Purchase and Sale Agreement (the "Agreement") was signed by me and GFPI effective March 31, 2008. A copy of the Agreement is attached as **Exhibit "B"**.

17. The "2008 Closing" as defined in the Agreement took place on March 31, 2008. At that time I personally paid to GFPI US$10 million to purchase the "Sold 2008 Refund" and paid a further US$10 million to purchase the "Sold 2009 Refund", as defined under the Agreement. The latter amount is described as the "2009 Purchase Price Deposit" under the Agreement. In exchange, I received a transfer acknowledgment and partial discharges from the First and Second Lien Lenders in respect of the Sold 2008 Refund, copies of which are attached hereto as **Exhibits "C" and "D"**.

18. The Lien Lending Agents in respect of the First and Second Lien Credit Agreements knew of and approved of the Agreement, and provided the partial discharges in respect of the Sold 2008 Refund thereunder.

19. Later in 2008, after GFPI received its 2008 tax refund from the Canada Revenue Agency, I received from GFPI approximately US$10 million in respect of my purchase of the Sold 2008 Refund.

20. The "2009 Closing" was to occur on January 2, 2009, as specified in the Agreement. I was not obliged to provide anything at the 2009 Closing as I had already paid the US$10 million purchase price in March 2008, and exchange rate adjustments meant that a small additional amount was to be paid to me by way of an adjustment under the Agreement. GFPI was to deliver a transfer acknowledgment and partial discharges of security from the First and Second Lien Lenders in relation to the 2009 Closing.

21. GFPI delivered neither of these documents on January 2, 2009, nor at any time thereafter. I understand from Mr. Lynch that the Lien Lenders indicated informally that they would not approve providing the partial discharges, and GFPI thereafter took the position that it would not provide the transfer acknowledgment (although the consent of the Lien Lenders is in no way a necessary condition under the Agreement). According to a recent email received by my counsel from Mr. Lynch on June 19, 2009 (a copy of which is attached as **Exhibit "E"**), GFPI made no written demand of the Lien Lenders to provide the partial discharges in respect of the Sold 2009 Refund. I did not agree with or consent to this.

22. Mr. Lynch sent a letter to me on January 15, 2009 in respect of the Sold 2009 Refund. A copy is attached as **Exhibit "F"**.

3. GFPI now takes the position that it will not deliver the transfer acknowledgment, and subject only to this motion) intends not to hold in trust or pay to me or as I may direct the Sold 2009 Refund when it receives its tax refunds in 2009, or thereafter.

24. Mr. Lynch acknowledged in his June 22, 2009 affidavit, referenced above, that the company is in default to me under the Agreement.

25. Through my counsel, I have written to GFPI demanding the delivery of the transfer acknowledgement and completion of the transaction in respect of the Sold 2009 Refund. A copy of my counsel's letter to Mr. Lynch, dated June 19, 2009, is attached and marked as **Exhibit "G"**.

26. The approach that GFPI has taken is at odds with the purchase and sale transaction as approved by the directors in 2008, and is in breach of the Agreement. I purchased an asset from GFPI. This was not a loan or capital injection. The Sold 2009 Refund, once received, should be held in trust for me and thereafter paid to me or as I may direct, by GFPI.

25. I swear this affidavit in good faith in respect of certain issues arising in connection with this proceeding, and for no improper purpose.

SWORN BEFORE ME at the City of Temiskaming Shores, in the Province of Ontario, this 8th day of September, 2009.	
A COMMISSIONER FOR OATHS in and for the Province of Ontario	PETER J. GRANT SR.

Monique Marie Plante, a Commissioner, etc.,
District of Timiskaming
for Grant Forest Products Inc. and its associated companies.
Expires May 7, 2011.

TAB A

This is Exhibit "A" referred to in the
Affidavit of Peter J. Grant Sr.
Sworn before me this 8th
day of September, 2009

A Commissioner for Taking Affidavits

Monique Marie Plante, a Commissioner, etc.,
District of Timiskaming
for Grant Forest Products Inc. and its associated companies.
Expires May 7, 2011.

BOARD OF DIRECTORS
GRANT FOREST PRODUCTS INC.

MEETING – Fairmont Royal York Hotel – Salon 3 – 19th Floor
March 27, 2008

PRESENT:

Peter Grant Sr.	-	Director
Peter M. Lynch	-	Director
Per Brunes	-	Director
Mike Harris	-	Director
Peter Grant Jr.	-	Director
Bill Stinson	-	Director
Jamie Wallace	-	Director
Eric Davis	-	by invitation of the Board
Monique Plante	-	by invitation of the Board
Sarah Grant	-	by invitation of the Board
Andrew Grant	-	by invitation of the Board

ABSENT:
Bridget Grant

FORMALITIES

Peter Grant Sr. as Chairman and C.E.O. of the Corporation called the meeting to order at 12:50 pm and acted as Chairman of the meeting and Monique Plante acted as Secretary of the meeting.

The minutes of the last meeting were distributed to all Directors. Per Brunes moved that the minutes of the last meeting dated December 7, 2007 be approved as submitted, seconded by Jamie Wallace and unanimously carried.

GFP INC. FINANCIAL REPORT

Eric Davis presented a financial report covering the following topics:

- 2007 Financial Results
- Approval of 2007 Audited Statements
- Project Gator Update
- YTD February Financial Results
- Projected 2008 Results
- Debt and Liquidity
- Projected Cash Flow
- Covenants
- Sensitivities & Risk

2007 Full Year Financial Results

Excluding Allendale, YTD December sales volume came in at 1,199.1 million sqft 3/8 just slightly off budget but well off from prior year by 363.5 million sqft 3/8 due to the continued shutdown of the Timmins operation and a two week December closure in Footner. YTD operating income came in at a loss of $4.6 million or $3.4 million less than the November forecast. This difference was caused by the lower volume and a lower selling price than originally forecasted plus some higher maintenance at Englehart and shutdown costs at Footner. SG&A was higher than the forecast by $3.3 million mainly due to year end and tax related adjustments. This resulted in a negative EBITDA of $53.3 million. Interest expense for the full year came in at $45.4 million or $0.9 million higher than forecasted due to lower cash balances and the lower interest rate on the cash. Due to the strength in the Canadian dollar we have a favorable foreign exchange gain on our net US$ debt YTD of Cdn$63.4 million. (This is a non cash item and will change both positive and negatively with the movement in the Canadian dollar to the US dollar. For example our YTD October gain was $85.4 million.) This resulted in net income coming in at a loss YTD of $35.5 million as compared to the forecasted loss of $46.2 million.

Eric also stated that as of December 31/07 the company had debt of US$562 million and cash of US$75 million for a net debt position of US$487 million. Eric also stated that as of December 31, 2007 GFPI was well within their covenant requirements, with senior debt to cap at 32% (requirement at or below 55%), total debt to cap at 47% (requirement at 60% or less), interest coverage is waived until March 2009 due to the PIK on the second loan, equity came in at Cdn$522 million (requirement at or higher than Cdn$375) and liquidity at Cdn$74 million (requirement at or above Cdn$70 million). Eric also stated that the cash was all invested in short term deposits averaging a return of approximately 3.5%.

The company had increased its cash position from US$24.8 million as of December 31, 2006 to US$75 million as of December 31, 2007 for a net increase of US$50.2 million. During the 2007 year the company had increased its loans by US$272.9 million for a net usage of US$222.7 million ($272.9 minus $50.2). The areas of usage are as follows:

- 06 tax payment of $2 million
- Operation losses $39.9 million
- SG&A $43.7
- Capital expenditures $150.4 (US operations $145 and Canada of $5)
- Interest payments $25.8
- Financing fee $6.7
- Swing line payment $1.3

The company had further inflows of $16.6 million from tax refunds and $30.5 million from working capital.

An update on the South Carolina expansion was provided. Eric stated that for the period from November 1, 2007 to December 31, 2007, Allendale had spent US$5 million with US$6.5 million remaining and in Clarendon we had spent US$5 million with US$20.8

million remaining. Both projects were on target to hit their revised budgets of US$280 million each. Allendale had accumulated startup losses of $38.3 million and starting in January 2008 would be amortized over a 3 year period. Clarendon had startup losses of $9.0 million and had yet to begin amortization. Due to changes in accounting standards all startup losses that remained as of January 2009 would have to be expensed and any future startup losses would have to be expensed in the period incurred.

On motion duly made by Bill Stinson, and seconded by Peter Lynch and unanimously carried, it was resolved that the annual report of the Corporation including the financial statements for the period ending December 31, 2007 and the report of the auditors thereon and related reports submitted to the meeting by Eric Davis, CFO be and the same are hereby approved and that any director be and he is hereby authorized to evidence the approval of the Board by signing the said report at the foot of the balance sheet and the annual report be submitted to the shareholder of the Corporation for approval.

YTD 2008 Financial Results

Including Allendale, YTD February sales volume came in at 273 million sqft 3/8 or 14.9 M3/8 better than budget and higher than prior year by 38 million sqft 3/8 due to the higher volume from the Allendale operation. YTD operating income came in at a loss of $4.3 million or $2.7 million less than budget. This difference was caused by a much lower selling price than budget ($113.55 vs. $126.30), offset by the higher volume. SG&A was slightly lower than budget ($4.6 vs. $4.7). Interest expense came in right on budget at $$8.8 million. Due to the strength in the Canadian dollar we have a favorable foreign exchange gain on our net US$ debt YTD of Cdn$3.6 million. This is a non cash item and will change both positive and negatively with the movement in the Canadian dollar to the US dollar. This resulted in net income coming in at a loss YTD of $17.5 million as compared to the budgeted loss of $17.9 million.

For the full year forecast as compared to the December 2008 budget volume will remain the same at 1,672 M3/8. However revenue has been lowered due to the lower selling price. Our revised FY mill nets have been lowered by $14 M3/8 to $128 or $10 lower than prior year. The drop in revenue of $23 million was offset by favorable variable costs due to better wood utilization and lower resin costs and usage. Fixed costs are expected to be in line with the previous budget at $77.1 million. The lower revenue slightly offset by the expected lower variable cost has caused us to lower the operating profit from $16.7 million to $9.9 million for a reduction of $6.8 million, however this is $44.1 million better than prior year.

SG&A has been further reduced by $1.3 million to $27.1 million due to further staff reductions. EBITDA is forecasted to come in at a loss of $24 million for an increase loss of $12.4 million due to the above items.

Interest expense has been revised to reflect the current borrowing rates and is now forecasted to be $59.8 million or $4.8 million higher than the previous budget due to a lower expected cash position. We are forecasting the Canadian dollar to average par with the US$ resulting in an unfavorable exchange loss on our net debt position. This is a non cash item and will change both positive and negatively with the movement in the Canadian dollar to the US dollar.

An update on the South Carolina expansion was provided. Eric Davis stated that for the period from January 1, 2008 to February 29, 2008, Allendale had spent US$1 million with US$5.2 million remaining and in Clarendon we had spent US$6 million with US$15.2 million remaining. Both projects were on target to hit their revised budgets of US$280 million each.

Eric Davis stated that as of February 29/08 the company had Debt of US$567 million and cash of US$33 million for a net Debt position of US$534 million. Eric also stated that as of February 29th, 2008 with the exception of Liquidity we were well within our covenant requirements, with senior debt to cap at 34% (requirement at or below 55%), Total debt to cap at 49% (requirement at 60% or less), interest coverage is waived until March 09, equity came in at Cdn$490 million (requirement at or higher than Cdn$375) and Liquidity at Cdn$33 million (requirement at or above Cdn$60 million). Eric also showed that the cash was all invested in short term deposits averaging a return of 3.5%.

YTD February the company had decreased its cash position by $41.8 million. Cash was used as follows:

- Operating losses of $5.4 million
- SG&A of $4.6
- Capital of $7.4
- Interest payments $5.3
- Corp. $3.2
- Working Capital build (F.G.mainly) of $15.9 million

As of the end of Q1 the company expects to have an increase of cash by $7 million growing from $33 million to $40 million. This is mainly due to receiving a tax refund in March of $8.6 million. However we would still be short of the liquidity covenant by $20 million, ($40 vs. $60).

Eric Davis showed that based on the assumptions that were presented to the board the liquidity covenant would be missed in Q1 and Q2 and would be within $5.5 million in Q3 and on side in Q4 as the expected tax refunds are received. It was proposed that the company sell $20 million of its expected tax refund ($10 million for 08 and $10 million for 09). The $20 million would be received in Q1 which would put the cash position at the end of Q1 at $60 million right at the liquidity requirements.

It was further shown that based on the 2008 and 2009 assumptions and the sensitivity impact on EBITDA that the company would require at least another $50 million to ensure covenant compliance through to the end of 2009. It was agreed that the company would as a first step, sell the $20 million of expected tax refund in Q1 with management continuing to source alternative financing and sources of funds and report back to the board with an update in 45 days.

SALE 2008 AND 2009 TAX REFUNDS

On motion duly made by Peter Lynch, seconded by Bill Stinson and unanimously carried it was resolved as follows:

"WHEREAS the Corporation wishes to increase its liquidity on March 31, 2008;

AND WHEREAS Peter Grant Sr., a person related to the Corporation, has agreed to assist the Corporation by purchasing from the Corporation certain of the Corporation's income tax refunds which the Corporation expects to receive in 2008, 2009 and 2010 and the Corporation wishes to sell such tax refunds to Mr. Grant;

NOW THEREFORE BE IT RESOLVED THAT:

The Corporation is hereby authorized to sell to Mr. Grant, or to such other purchaser as he may direct, the Sold 2008 Refund and the Sold 2009 Refund (both as defined by the transaction summary dated March 27, 2008 (the "Summary") reviewed by the directors, a copy of which is hereby directed to be attached as Schedule "A" to a copy of this resolution in the Corporation's minute book);

The Corporation is hereby authorized to complete the transactions referred to in the Summary substantially in accordance with the provisions of the Summary, subject to any changes thereto to which any officer of the Corporation may agree;

The Corporation is hereby authorized to execute and deliver an agreement of purchase and sale between the Corporation and Mr. Grant with respect to such transactions, such agreement of purchase and sale to be in a form satisfactory to an officer of the Corporation;

The Corporation is hereby authorized to execute and deliver to the purchaser the following documents with respect to the transaction:

- *A transfer by the Corporation to the purchaser of the Sold 2008 Refund on March 31, 2008 at the closing of such sale; and*
- *A transfer by the Corporation to the purchaser of the Sold 2009 Refund in 2009 at the closing of the sale;*

Each of the agreements or other documents referred to in this resolution shall be in a form approved by any officer of the Corporation and the execution by an officer of the Corporation of such agreement or other document shall be conclusive evidence of such officer's approval of the form of such agreement or other document;

Each of the officers of the Corporation is hereby authorized for and on behalf of the Corporation to execute alone and to deliver to the purchaser each of the documents referred to in this resolution and all such other agreements, instruments and documents as may be necessary or desirable to give effect to this resolution or to complete the transactions referred to in the Summary; and

Each of the officers of the Corporation is hereby authorized to do all such other acts and things as may be necessary or desirable to give effect to this resolution or in connection with the performance by the Corporation of its obligations pursuant to any of the documents referred to in this resolution."

PEER GROUP CASH FLOW

A peer group summary (Ainsworth, Norbord, LP) was presented by Eric Davis

OSB GROUP – presented by Peter Grant Jr.

- Strategic Focus for 2008 (recap from December meeting)
  - Continued cost reduction and cash conservation efforts to reflect ongoing downmarket and production downsizing
  - Continued focus on Allendale productivity and cost
  - Clarendon mill construction and start-up (timing under review)
  - Take advantage of specialty and value-added product opportunities to enhance margin
  - Continue operational initiatives to support above
- Performance Review
- Market Overview
- 2008 Actions to Date & Game-Plan
- Strategy Review
- Major Cost & Margin Improvement Activities

COMPLIANCE COMMITTEE REPORT

The results of the meeting of the Compliance Committee held earlier that day were reported to the directors. That included a report on the MOE charges relating to the Timmins facility emissions from September 2005 to September 2006. It was confirmed that there were no other compliance issues since the last meeting of the Board of directors.

AINSWORTH – Peter Lynch

A general discussion was held regarding the Ainsworth situation and in particular the potential position of Ainsworth with respect to the working capital requirements for the Footner Mill.

OSB CLASS ACTION

Peter Lynch gave an update on the OSB Class Action.

NEW BUSINESS

There was no new business

NEXT MEETINGS:

June 12 & 13, 2008 – Toronto – Royal York Hotel with Senior Managers
October 9, 2008 – Toronto – Royal York Hotel
December 4 & 5, 2008 – Royal York Hotel with Senior Managers

CONCLUSION:

It was moved by Per Brunes, seconded by Jamie Wallace that the meeting be concluded. Carried.

The meeting adjourned at 4:30 pm.

Peter J. Grant
Chairman

SCHEDULE "A"

SUMMARY OF THE SALE BY GRANT FOREST PRODUCTS INC. TO PETER GRANT SR. OF INCOME TAX REFUNDS EXPECTED TO BE RECEIVED BY GRANT FOREST PRODUCTS INC. IN 2008, 2009 AND 2010 FOR A TOTAL SALE PRICE OF THE CANADIAN DOLLAR EQUIVALENT OF US $20 MILLION

March 27, 2008
SUMMARY OF PROPOSED SALE

Objective: To improve GFPI's liquidity and to continue to comply with its liquidity covenants under the first lien credit agreement (Section 9.02(5)) and the second lien credit agreement (Section 9.02(4)).

Tax Refunds: Refunds under the *Income Tax Act* or the *Corporations Tax Act* in an estimated amount:

In excess of Cdn $45 million, expected to be received by GFPI from September 1, 2008 to March 31, 2009 due to the overpayment of 2005-2006 tax (the "2008 Tax Refund"); and

In excess of Cdn $15 million, expected to be received by GFPI from September 1, 2009 to March 31, 2010 due to overpayment of 2006 tax (the "2009 Tax Refund").

Method: Convert GFPI's tax refund claims to cash of GFPI before the tax refunds are received by GFPI by the following steps:

GFPI sells to a purchaser (the "Purchaser") related to GFPI, GFPI's interests in that amount of the 2008 Tax Refund and that amount of the 2009 Tax Refund which together have, when sold, a fair market value equivalent to the Canadian dollar equivalent of US $20 million for a total sale price of the Canadian dollar equivalent of US $20 million as follows:

On March 31, 2008, sale of that portion of the 2008 Tax Refund (the "Sold 2008 Refund"), the present value of which on March 31, 2008 is the Canadian dollar equivalent of US $10 million (based on a discount rate equivalent to 90-day LIBOR on March 31, 2008) for the sale price of the Canadian dollar equivalent of US $10 million paid in cash to GFPI on March 31, 2008; and

On January 2, 2009, sale of that portion of the 2009 Tax Refund (the "Sold 2009 Refund"), the present value of which on January 2, 2009 is the Canadian dollar equivalent on January 2, 2009 of US $10 million (based on a discount rate equivalent to 90-day LIBOR on

January 2, 2009) for the sale price of the Canadian dollar equivalent of US $10 million, with the estimated sale price (based on the exchange rate in effect on March 31, 2008) paid in cash to GFPI on March 31, 2008 (i.e. estimated purchase price prepaid but with an agreement to adjust price or the amount of the Sold 2009 Refund on January 2, 2009 to reflect exchange rate change between March 31, 2008 and January 2, 2009). The actual sale proceeds received by GFPI are the Canadian dollar equivalent as at January 2, 2009 of US $10 million. The prepaid purchase price is not held by GFPI in trust and may be used by GFPI.

Purchaser would agree that it does not acquire any right, title or interest in the Sold 2009 Refund until it receives the transfer thereof from GFPI on January 2, 2009.

If it is subsequently determined by CRA that the purchase price paid for the Sold 2008 Refund or the purchase price paid for the Sold 2009 Refund was not fair market value, the Purchaser and GFPI shall, to the extent not prohibited by the provisions of the first lien credit agreement or the second lien credit agreement, adjust such purchase price or such refunds so that each refund is sold for a fair market price.

If any of the Sold 2008 Refund is not received by the Purchaser by March 31, 2009, to the extent not prohibited by the provisions of the first lien credit agreement or the second lien credit agreement, the purchase price thereof or the Sold 2008 Refund would be adjusted, GFPI would, at its option, either refund a pro rata amount of the purchase price to Purchaser without interest or deduction at a date after March 31, 2009 specified by the Purchaser or include in the Sold 2008 Refund an applicable amount of GFPI's tax refunds to be received after March 31, 2010 and the Purchaser would remit to GFPI any of such unreceived refund if it is received by the Purchaser after such adjustment.

If any of the Sold 2009 Refund is not received by the Purchaser by March 31, 2010, to the extent not prohibited by the provisions of the first lien credit agreement or the second lien credit agreement, the purchase price thereof or the Sold 2009 Refund would be adjusted; GFPI would, at its option, either refund a pro rata amount of the purchase price to Purchaser without interest or deduction at a date after March 31, 2010 specified by the Purchaser or include in the Sold 2009 Refund an applicable amount of GFPI's unsold tax refunds to be received after March 31, 2010 and the Purchaser would remit to GFPI any of such unreceived refund if it is received by the Purchaser after such adjustment.

[NTD: US $10 million sale proceeds received by GFPI from sale of refunds in each of 2008 and 2009 at fair market value to comply with the limitations on Dispositions pursuant to Section 9.04(1)(c) of the first lien credit agreement and Section 9.04(1)(c) of the second lien credit agreement.]

GFPI would not sell to Purchaser any interest payable by CRA to GFPI with respect to the 2008 Tax Refund or the 2009 Tax Refund.

The Purchaser would pay income tax on its gain from the purchased refunds (based on the difference between the amount of the refunds it receives and the amount it paid to buy them).

Each of applicable First Lien Agent and Second Lien Agent provides Purchaser with a partial discharge of its security to discharge each of the Sold 2008 Refund and the Sold 2009 Refund (collectively, the "Sold Refunds") from such security (and to release any interest therein) when the applicable transfers are delivered.

[NTD: See Section 10.04 of first lien credit agreement and Section 10.04 of second lien credit agreement.]

GFPI may, after delivery to the Purchaser of the transfer of the Sold 2008 Refund, direct CRA and the Minister of Finance to pay the Sold 2008 Refund to the Purchaser and may, after the delivery to the Purchaser of the transfer of the Sold 2009 Refund, direct CRA and the Minister of Finance to pay the Sold 2009 Refund to the Purchaser.

GFPI would agree to hold in trust for Purchaser, keep segregated and pay to Purchaser any amount of the Sold Refunds received by GFPI.

GFPI would not grant Purchaser any security for GFPI's obligations to Purchaser with respect to the Sold Refunds and would not pay any interest on the prepaid sale price for the Sold 2009 Refund or any fee related to the refund sales.

<u>Documents Required:</u>

<u>A. On or before March 31, 2008</u>:

Agreement between GFPI and Purchaser re sales of Sold Refunds.

Transfer by GFPI to Purchaser of Sold 2008 Refund.

Partial discharge by First Lien Agent of the Sold 2008 Refund from security.

Partial discharge by Second Lien Agent of the Sold 2008 Refund from security.

Approval of independent committee of GFPI's board of directors.

[NTD: See Sections 9.04 (15) of first and second lien credit agreements.]

B. January 2, 2009:

Transfer by GFPI to Purchaser of the Sold 2009 Refund.

Partial discharge by First Lien Agent of Sold 2009 Refund.

Partial discharge by Second Lien Agent of Sold 2009 Refund.

TAB B

This is Exhibit "B" referred to in the
Affidavit of Peter J. Grant Sr.
Sworn before me this 8th
day of September, 2009

A Commissioner for Taking Affidavits

Monique Marie Plante, a Commissioner, etc.,
District of Timiskaming
for Grant Forest Products Inc. and its associated companies.
Expires May 7, 2011.

Draft: March 31, 2008

TAX REFUND PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is dated as of the 31st day of March, 2008,

B E T W E E N :

PETER GRANT SR.

(hereinafter referred to as the "Purchaser")

- and -

GRANT FOREST PRODUCTS INC., a corporation incorporated under the laws of the Province of Ontario

(hereinafter referred to as the "Vendor")

WHEREAS the Vendor expects to receive refunds under the *Income Tax Act* and under the *Corporations Tax Act* and wishes to sell parts of such refunds to the Purchaser (in the case of the *Income Tax Act*, as permitted by section 220(6) of the *Income Tax Act*) in order to improve the Vendor's liquidity;

AND WHEREAS the Purchaser is related to the Vendor and wishes to assist it to improve its liquidity;

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each party to the other, the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

Section 1.01 Definitions

In this Agreement:

"Agreement" means this tax refund purchase and sale agreement;

"Books and Records" means all the Vendor's books, records, data and information relating to any or all of the Purchased Assets;

"Business Day" means a day other than a Saturday, Sunday or any other day on which the principal Canadian chartered banks located in the City of Toronto are not open for the transaction of domestic business during normal banking hours;

"*Corporations Tax Act*" means the *Corporations Tax Act* (Ontario), R.S.O. 1990, c-40, as amended;

"**CRA**" means Canada Revenue Agency;

"**Discount Rate**" on any day means the rate which is equivalent to the 90-Day LIBO Rate on such day;

"**Finance Minister**" means the Ontario Minister of Finance or his or her successor;

"**First Lien Agents**" means The Toronto-Dominion Bank and Toronto Dominion (Texas) LLC, as agents pursuant to the First Lien Credit Agreement;

"**First Lien Credit Agreement**" means the credit agreement dated as of October 26, 2005 among the Vendor, Grant U.S. Holdings GP (formerly Grant U.S. Holdings LLP), Grant Forest Products Sales Inc., Grant Alberta Inc., Southeast Properties LLC (formerly Southeast Properties Inc.), Grant Allendale LP (formerly Grant Allendale Inc.), Grant Clarendon LP (formerly Grant Clarendon Inc.), The Toronto-Dominion Bank as Canadian Administrative Agent, Toronto Dominion (Texas) LLC, as U.S. Administrative Agent, and the lenders referred to therein (as amended, *inter alia*, to include Grant US Sales Inc. as a guarantor) (as the same may be further amended, restated, supplemented or replaced from time to time);

"*Income Tax Act*" means, collectively, the *Income Tax Act*, R.S.C. 1985, 5th Supplement, the Income Tax Application Rules, R.S.C. 1985, 5th Supplement, and the Income Tax Regulations, in each case as amended;

"**90-Day LIBO Rate**" on any day means the interest rate expressed as a percentage rate per year calculated on the basis of a 360-day year equivalent to the rate for deposits in U.S. dollars in the London, England interbank market for a period of 90 days which appears on the "LIBOR01 Page" of the Reuters Money Rate Service (or any successor source from time to time for such rate) as of 11:00 a.m. (London, England time) on the second Euro business day preceding such day;

"**Post-2009 Income Tax Refunds**" means the Vendor's income tax refunds to be received by the Vendor after March 31, 2010;

"**Purchased Assets**" means the Sold 2008 Refund and the Sold 2009 Refund;

"**Second Lien Agents**" means The Toronto-Dominion Bank and Toronto Dominion (Texas) LLC, as agents pursuant to the Second Lien Credit Agreement.

"**Second Lien Credit Agreement**" means the credit agreement dated as of March 21, 2007 among Grant U.S. Holdings GP (formerly Grant U.S. Holdings LLP), as borrower, the Vendor, Grant Forest Products Sales Inc., Grant Alberta Inc., Southeast Properties LLC (formerly Southeast Properties Inc.), Grant Allendale LP (formerly Grant Allendale Inc.), Grant Clarendon LP (formerly Grant Clarendon Inc.) and Grant US Sales Inc., as guarantors, The Toronto-Dominion Bank, as Canadian Collateral Agent, Toronto Dominion (Texas) LLC, as

Administrative Agent and U.S. Collateral Agent, and the lenders referred to therein (as the same may be amended, restated, supplemented or replaced from time to time);

"Sold 2008 Refund" means that part of the 2008 Tax Refund, the present value of which, based on the Discount Rate in effect on March 31, 2008, is the Canadian dollar equivalent on March 31, 2008 of US $10 million;

"Sold 2009 Refund" means that part of the 2009 Tax Refund, the present value of which, based on the Discount Rate in effect on January 2, 2009, is the Canadian dollar equivalent on January 2, 2009 of US $10 million;

"2008 Closing" means the closing of the purchase and sale of the Sold 2008 Refund on March 31, 2008;

"2009 Closing" means the closing of the purchase and sale of the Sold 2009 Refund on January 2, 2009;

"2008 Purchase Price" means the Canadian dollar equivalent on March 31, 2008 of US $10 million payable by the Purchaser to the Vendor on March 31, 2009 for the Sold 2008 Refund;

"2009 Purchase Price" means the Canadian dollar equivalent on January 2, 2009 of US $10 million payable by the Purchaser to the Vendor for the Sold 2009 Refund; 1.2 W.

"2009 Purchase Price Deposit" means the Canadian dollar equivalent on March 31, 2008 of US $10 million;

"2008 Tax Refund" means the Vendor's income tax refund in excess of $45 million which the Vendor expects to receive during the period from September 1, 2008 to March 31, 2009 with respect to its income taxes paid for 2005 and 2006; and

"2009 Tax Refund" means the Vendor's income tax refund in excess of $15 million which the Vendor expects to receive during the period from September 1, 2009 to March 31, 2010 with respect to its income taxes paid for 2006.

Section 1.02 Currency

All references in this Agreement to monetary amounts, unless indicated to the contrary, are to Canadian currency.

Section 1.03 Entire Agreement; Amendment; Waiver

This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes any and all prior summaries, negotiations, understandings and agreements between the parties. This Agreement may not be amended or modified in any respect except by written agreement signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar); nor shall such waiver constitute a waiver or continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound thereby.

Section 1.04 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (excluding any conflict of law rule or principle of such laws that might refer such interpretation or enforcement to the laws of another jurisdiction). Each party hereto irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or relating hereto.

Section 1.05 Singular, Plural and Gender

Words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders.

Section 1.06 Certain Words

In this Agreement, the words "including" and "includes" means "including (or includes) without limitation".

Section 1.07 Headings

The headings contained in this Agreement are for convenience of reference only, and shall not affect the meaning or interpretation hereof.

ARTICLE 2
PURCHASE AND SALE OF PURCHASED ASSETS

Section 2.01 Agreement of Purchase and Sale

Subject to the provisions of this Agreement, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase from the Vendor:

(a) the Sold 2008 Refund on March 31, 2008; and

(b) the Sold 2009 Refund on January 2, 2009.

Section 2.02 Without Recourse and As Is, Where Is

The Purchaser acknowledges that the Vendor is selling the Purchased Assets to the Purchaser on a non-recourse, "as is, where is" basis. No representation, warranty or condition is expressed or can be implied pursuant to this Agreement or otherwise as to title, encumbrances, description, fitness for purpose, merchantability, condition, assignability, collectability, quantity, outstanding amount, value or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell same.

ARTICLE 3

PURCHASE PRICE

Section 3.01 Purchase Price

The purchase price for the Sold 2008 Refund shall be the 2008 Purchase Price. The purchase price for the Sold 2009 Refund shall be the 2009 Purchase Price. The amount of these purchase prices shall be adjusted in accordance with the provisions of this Agreement.

Section 3.02 Payment of Purchase Price

The Purchaser shall pay the purchase prices to the Vendor by certified cheque, bank draft or wire transfer of immediately available funds to an account specified by the Vendor as follows:

(a) the Purchaser shall pay the 2008 Purchase Price to the Vendor on March 31, 2008 at the 2008 Closing; and

(b) the Purchaser shall pay the 2009 Purchase Price Deposit to the Vendor on March 31, 2008 at the 2008 Closing.

Section 3.03 Transfer Taxes

The Purchaser shall pay directly to the appropriate taxing authority when due, any applicable federal and provincial sales and transfer taxes exigible in connection with the transactions contemplated by the Agreement.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

Section 4.01 Vendor's Representations

The Vendor hereby represents and warrants to the Purchaser that:

(a) the Vendor is a corporation duly incorporated and validly subsisting under the laws of the jurisdiction of its incorporation or amalgamation, as the case may be; and

(b) the Vendor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act*.

ARTICLE 5

COVENANTS

Section 5.01 Purchaser's Access to Books and Records

The Vendor shall during normal business hours allow the Purchaser reasonable access to all Books and Records and allow the Purchaser to make copies of all Books and Records.

Section 5.02 No Interest of Purchaser in Sold 2009 Refund Until 2009 Closing

The parties agree, notwithstanding any other provision of this Agreement or any other right or purported right of the Purchaser, that the Purchaser does not acquire any right, title or interest in the Sold 2009 Refund, and the Vendor does not sell, assign or transfer any right, title or interest in the Sold 2009 Refund until the Vendor delivers to the Purchaser at the 2009 Closing, the transfer referred to in Section 7.04(a).

Section 5.03 No Transfer of Interest

Neither the Sold 2008 Refund nor the Sold 2009 Refund shall include any interest payable by CRA with respect to such refund and the Vendor shall be entitled to receive and retain any and all such interest.

Section 5.04 Directions to CRA and Finance Minister

Either party may, after delivery to the Purchaser of the transfer of the Sold 2008 Refund referred to in Section 7.02(a), direct CRA, the Finance Minister and any other appropriate person to pay the Sold 2008 Refund to the Purchaser. Either party may, after the delivery to the Purchaser of the transfer of the Sold 2009 Refund referred to in Section 7.04(a), direct CRA, the Finance Minister and any other appropriate person to pay the Sold 2009 Refund to the Purchaser.

Section 5.05 Sold 2008 Refund Held in Trust by Vendor

The Vendor shall hold in trust for the Purchaser, keep segregated from any other funds, accounts or assets of the Vendor and pay to the Purchaser any amount of the Sold 2008 Refund received by the Vendor after the completion of the 2008 Closing.

Section 5.06 Sold 2009 Refund Held in Trust by Vendor

The Vendor shall hold in trust for Purchaser, keep segregated from any other funds, accounts or assets of the Vendor and pay to Purchaser any amount of the Sold 2009 Refund received by the Vendor after the completion of the 2009 Closing.

Section 5.07 No Security, Interest or Fee

The Vendor shall not grant to the Purchaser any security for the Vendor's obligations to Purchaser with respect to the Sold 2008 Refund or the Sold 2009 Refund and shall not pay to the Purchaser any interest on the 2009 Purchase Price Deposit paid to the Vendor on March 31, 2008 with respect to the Sold 2009 Refund or any fee related to the refund sales.

Section 5.08 No Security Interest

The Purchaser agrees that it does not acquire and shall not acquire any security interest in any of the Purchased Assets and, for greater certainty, hereby discharges any present or future security interest it now or hereafter acquires in any of the Purchased Assets; provided that the foregoing shall not affect the Purchaser's ownership of any Purchased Assets acquired by the Purchaser by the transfers referred to in sections 7.02(a) and 7.04(a) hereof.

Section 5.09 Purchased Assets may be the First Part or Parts of Refunds Received

The Sold 2008 Refund shall, unless otherwise specified by the Purchaser to the Vendor in writing, be the first part or parts of the 2008 Tax Refund received by the Vendor or the Purchaser, up to the amount of the Sold 2008 Refund. The Sold 2009 Refund shall, unless otherwise specified by the Purchaser to the Vendor in writing, be the first part or parts of the 2009 Tax Refund received by the Vendor or the Purchaser, up to the amount of the 2009 Tax Refund.

Section 5.10 Direction by Purchaser

The Purchaser may, before the delivery of the applicable transfer referred to in sections 7.02(a) or 7.04(a) hereof, direct the Vendor in writing to transfer the Sold 2008 Refund or the Sold 2009 Refund, as applicable, to any other person or persons specified by Purchaser and the Vendor shall do so.

Section 5.11 2009 Purchase Price Deposit not held in Trust by Vendor

The 2009 Purchase Price Deposit paid by the Purchaser to the Vendor at the 2008 Closing shall not be held by the Vendor in trust and may be used by the Vendor.

Section 5.12 No Default under Credit Agreements

Notwithstanding any provision of this Agreement, the Vendor shall not be required to make any adjustment referred to in this Agreement if such adjustment would constitute or result in a default by the Vendor under any provision of the First Lien Credit Agreement or the Second Lien Credit Agreement. Without limitation to the foregoing, in no circumstance shall the proceeds received by the Vendor with respect to the sale of the 2008 Sold Refund exceed the Canadian dollar equivalent of US $10 million and in no circumstance shall the proceeds received by the Vendor with respect to the sale of the Sold 2009 Refund exceed the Canadian dollar equivalent of US $10 million. In the event the Vendor does not, as a result of the foregoing, make any adjustment otherwise required by this Agreement, the Vendor and the Purchaser shall make such adjustment promptly after the making of such adjustment no longer constitutes or results in a default by the Vendor under either the First Lien Credit Agreement or the Second Lien Credit Agreement.

ARTICLE 6
CONDITIONS

Section 6.01 Conditions for benefit of the Purchaser

The obligation of the Purchaser to complete the transactions contemplated hereunder is subject to the following conditions being fulfilled or performed at or prior to the 2008 Closing or the 2009 Closing, as applicable:

(a) all representations and warranties of the Vendor contained in this Agreement shall be true and correct in all material respects as at the time of such closing with the same force and effect as if made at and as of such time;

(b) the Vendor shall have complied with and performed all of its covenants and obligations contained in this Agreement;

(c) the Vendor shall have delivered to the Purchaser the documents, or made any payments referred to:

(i) in the case of the 2008 Closing, in Section 7.02; and

(ii) in the case of the 2009 Closing, in Section 7.04; and

(d) no injunction or other court order shall have been issued to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement.

The foregoing conditions are for the exclusive benefit of the Purchaser and any such conditions may be waived by the Purchaser in whole or in part. Any such waiver shall be binding on the Purchaser only if it is in writing.

Section 6.02 Conditions for benefit of the Vendor

The obligation of the Vendor to complete the transactions contemplated hereunder is subject to the following conditions being fulfilled or performed at or prior to the 2008 Closing or the 2009 Closing, as applicable:

(a) the Purchaser shall have complied with and performed all of its covenants and obligations contained in this Agreement;

(b) the Purchaser shall have delivered to the Vendor the documents, or made any payments referred to:

(i) in the case of the 2008 Closing, in Section 7.03; and

(ii) in the case of the 2009 Closing, in Section 7.05; and

(c) no injunction or other court order shall have been issued to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement.

The foregoing conditions are for the exclusive benefit of the Vendor and any such conditions may be waived by the Vendor in whole or in part. Any such waiver shall be binding on the Vendor only if it is made in writing.

Section 6.03 Non-Satisfaction of Conditions

If any condition set out in Section 6.01 or Section 6.02 is not satisfied or performed prior to the time specified therefor, the party for whose benefit the condition is inserted may:

(a) in writing, waive compliance with the condition in whole or in part in its or his sole discretion by notice to the other party and without prejudice to any of its or his rights of termination in the event of non-fulfilment of any other condition in whole or in part; or

(b) elect to terminate this Agreement, in which case no party shall be under any further obligation to the others to complete the transactions contemplated by this Agreement.

ARTICLE 7
CLOSING

Section 7.01 Closing Dates and Place of Closing

The transactions contemplated by this Agreement shall close and be completed at the 2008 Closing and the 2009 Closing, as applicable. The completion of the transactions contemplated hereunder shall take place at the office of the Vendor's solicitors, located at 100 King Street West, Suite 4200, Toronto, Ontario M5X 1B2 or such other location as the parties may agree in writing.

Section 7.02 Deliveries on 2008 Closing by the Vendor

The Vendor shall deliver to the Purchaser at the 2008 Closing, in form and substance satisfactory to the Purchaser, acting reasonably:

(a) a transfer by the Vendor to the Purchaser of the Sold 2008 Refund;

(b) a partial discharge by the First Lien Agents of security held by them to discharge the Sold 2008 Refund therefrom and to release any interest they have in the Sold 2008 Refund;

(c) a partial discharge by the Second Lien Agents of security held by them to discharge the Sold 2008 Refund therefrom and to release any interest they have in the Sold 2008 Refund;

(d) a certified copy of a resolution of the directors of the Vendor authorizing the transactions referred to in this Agreement;

(e) an approval by the ad hoc independent committee of the Vendor's board of directors of the transactions contemplated by this Agreement; and

(f) such other documents as are required by this Agreement.

Section 7.03 Deliveries or Payments on 2008 Closing by the Purchaser

The Purchaser shall deliver or pay to the Vendor at the 2008 Closing:

(a) the 2008 Purchase Price in accordance with Section 3.02(a);

(b) the 2009 Purchase Price Deposit in accordance with Section 3.02(b); and

(c) such other documents as are required by this Agreement.

Section 7.04 Deliveries or Payments on 2009 Closing by the Vendor

The Vendor shall deliver or pay to the Purchaser at the 2009 Closing, in form and substance satisfactory to the Purchaser, acting reasonably:

(a) a transfer by the Vendor to the Purchaser of the Sold 2009 Refund;

(b) a partial discharge by the First Lien Agents or their respective successors of security held by them to discharge the Sold 2009 Refund therefrom and to release any interest they have in the Sold 2009 Refund;

(c) a partial discharge by the Second Lien Agents or their respective successors of security held by them to discharge the Sold 2009 Refund therefrom and to release any interest they have in the Sold 2009 Refund;

(d) the adjustment amount referred to in section 8.03(b) if such amount is then payable by the Vendor; and

(e) such other documents as are required by this Agreement.

Section 7.05 Deliveries or Payments on 2009 Closing by the Purchaser

The Purchaser shall deliver or pay to the Vendor at the 2009 Closing:

(a) the adjustment amount referred to in Section 8.03(a) if such amount is then payable by the Purchaser; and

(b) such other documents as are required by this Agreement.

ARTICLE 8

ADJUSTMENTS

Section 8.01 Sold 2008 Refund Adjustments if any Sold 2008 Refund not received by March 31, 2009

If any amount of the Sold 2008 Refund is not received by the Purchaser by March 31, 2009, the Vendor shall either:

(a) refund to the Purchaser on a date after March 31, 2009 specified by the Purchaser in writing a pro rata amount of the 2008 Purchase Price with respect to such amount of the Sold 2008 Refund not received by the Purchaser by March 31, 2009; or

(b) adjust the Sold 2008 Refund so that it includes that amount of Post-2009 Income Tax Refunds which results in the Vendor's selling and the Purchaser's buying the Sold 2008 Refund (including Post-2009 Income Tax Refunds), the aggregate fair market value of which as at March 31, 2008 (using the Discount Rate in effect on March 31, 2008) is equivalent to the 2008 Purchase Price,

as determined by the Vendor. The Vendor shall give the Purchaser, on or before April 30, 2009, written notice of which of the foregoing alternatives the Vendor selects. The Purchaser shall promptly remit to the Vendor any of such unreceived Sold 2008 Refund (excluding such Post-2009 Income Tax Refunds) if it is received by the Purchaser after such adjustment.

Section 8.02 Sold 2008 Refund Adjustments if 2008 Purchase Price is determined by CRA not to be fair market value

If CRA determines that the 2008 Purchase Price was not equivalent to the fair market value on March 31, 2008 of the Sold 2008 Refund purchased by the Purchaser for such price, the Vendor and the Purchaser shall either:

(a) adjust the 2008 Purchase Price; or

(b) adjust the Sold 2008 Refund so that:

(i) it is reduced to the amount, the fair market value of which; or

(ii) it is increased to include that amount of Post-2009 Income Tax Refunds which results in the Vendor's selling and the Purchaser's buying the Sold 2008 Refund (including such Post-2009 Income Tax Refunds), the aggregate fair market value of which,

as at March 31, 2008 (using the Discount Rate in effect on March 31, 2008) is equivalent to the 2008 Purchase Price,

as determined by the Vendor. The Vendor shall give the Purchaser written notice of which of the foregoing alternatives the Vendor selects.

Section 8.03 Adjustments at 2009 Closing with respect to Sold 2009 Refund due to Exchange Rate Fluctuations

If the exchange rate between Canadian dollars and US dollars on January 2, 2009 is different from such exchange rate on March 31, 2008, the Purchaser and the Vendor shall adjust the amount received by the Vendor for its sale of the Sold 2009 Refund on January 2, ~~2009 as follows so that the actual sale proceeds received by the Vendor from its sale of the Sold~~ 2009 Refund on January 2, 2009 shall be the Canadian dollar equivalent on January 2, 2009 of US $10 million in order *inter alia* to comply with section 9.04 (1)(o) of the First Lien Credit Agreement and section 9.04(1)(o) of the Second Lien Credit Agreement:

(a) if the 2009 Purchase Price exceeds the 2009 Purchase Price Deposit, the Purchaser shall pay the difference to the Vendor on January 2, 2009; or

(b) if the 2009 Purchase Price Deposit exceeds the 2009 Purchase Price, the Vendor shall refund the difference to the Purchaser on January 2, 2009,

as calculated by the Vendor. The Vendor shall give the Purchaser, on or before January 2, 2009, written notice of which of the foregoing alternatives applies. Despite the foregoing, if the 2009 Purchase Price Deposit exceeds the 2009 Purchase Price, the Vendor may, at its option on written notice to the Purchaser, instead of refunding such difference to the Purchaser as provided by the foregoing subsection (b), increase on January 2, 2010 the amount of the Sold 2009 Refund to include in the Sold 2009 Refund an amount of the then unsold Post-2009 Income Tax Refunds, the fair market value of which, as at January 2, 2009 (using the Discount Rate in effect on January 2, 2009) is equivalent to such excess so that the purchase price received by the Vendor for the Sold 2009 Refund (excluding such Post-2009 Income Tax Refunds) is the Canadian dollar equivalent on January 2, 2009 of US $10 million.

Section 8.04 Sold 2009 Refund Adjustments if any Sold 2009 Refund not received by March 31, 2010

If any amount of the Sold 2009 Refund is not received by the Purchaser by March 31, 2010, the Vendor shall either:

(a) refund to the Purchaser on a date after March 31, 2010 specified by the Purchaser in writing a pro rata amount of the 2009 Purchase Price with respect to such amount of the Sold 2009 Refund not received by the Purchaser by March 31, 2010; or

(b) adjust the Sold 2009 Refund so that it includes that amount of then unsold Post-2009 Income Tax Refunds which results in the Vendor's selling and the Purchaser's buying the Sold 2009 Refund (including such Post-2009 Income Tax Refunds), the aggregate fair market value of which as at January 2, 2009 (using the Discount Rate in effect on January 2, 2009) is equivalent to the 2009 Purchase Price,

as determined by the Vendor. The Vendor shall give the Purchaser, on or before April 30, 2010, ~~written notice of which of the foregoing alternatives the Vendor selects. The Purchaser shall~~

promptly remit to the Vendor any of such unreceived Sold 2009 Refund (excluding such Post-2009 Income Tax Refunds) if it is received by the Purchaser after such adjustment.

Section 8.05 Sold 2009 Refund Adjustments if 2009 Purchase Price is determined by CRA not to be fair market value

If CRA determines that the 2009 Purchase Price was not equivalent to the fair market value on January 2, 2009 of the Sold 2009 Refund purchased by the Purchaser for such price, the Vendor and the Purchaser shall either:

(a) adjust the 2009 Purchase Price; or

(b) adjust the Sold 2009 Refund so that:

(i) it is reduced to the amount, the fair market value of which; or

(ii) it is increased to include that amount of then unsold Post-2009 Income Tax Refunds which results in the Vendor's selling and the Purchaser's buying the Sold 2009 Refund (including any such Post-2009 Income Tax Refunds), the aggregate fair market value of which,

as at January 2, 2009 (using the Discount Rate in effect on January 2, 2009) is equivalent to the 2009 Purchase Price,

as determined by the Vendor. The Vendor shall give the Purchaser written notice of which of the foregoing alternatives the Vendor selects.

ARTICLE 9

Section 9.01 Obligations to Survive

Notwithstanding the completion of the transactions contemplated hereunder or the delivery of documents pursuant to this Agreement, the obligations, covenants, representations and warranties of the parties hereto shall survive such completion and shall remain in full force and effect and shall not merge as a result thereof.

Section 9.02 Further Assurances

Each of the parties hereto from and after each applicable closing shall, from time to time, and at the request and expense of the party requesting the same, do all such further acts and things and execute and deliver such further transfers (including any additional transfers by the Vendor to the Purchaser of Post-2009 Income Tax Refunds required to be included in Purchased Assets pursuant to any provision of this Agreement), instruments, documents, matters, papers and assurances as may be reasonably requested for more effectually carrying out the true intent and meaning of this Agreement.

Section 9.03 No Assignment

Neither party hereto shall be entitled to assign any of its rights or interests hereunder without the prior written consent of the other party hereto and any such purported assignment, without such consent, shall not be valid.

Section 9.04 Time of the Essence

Time shall be of the essence of this Agreement.

Section 9.05 Costs and Expenses

Each party hereto shall be responsible for all costs and expenses (including the fees and disbursements of legal counsel) incurred by it or him in connection with this Agreement and the transactions contemplated herein.

Section 9.06 Notices

Any notice, demand or other communication required or permitted to be given to any party hereunder shall be given in writing and addressed as follows:

(a) if to the Vendor:

181 Bay Street
Suite 1520
Toronto, Ontario
M5H 2T3

Attention: Vice-President
Facsimile No.: 416-214-1360

(b) if to the Purchaser:

181 Bay Street
Suite 1520
Toronto, Ontario
M5H 2T3

Facsimile No.: 416-214-1360

Any such notice shall be deemed to be sufficiently given if personally delivered or sent by facsimile transmission, and in each case shall be deemed to have been received by the other party on the same day on which it was delivered or sent by facsimile transmission, if such day is a Business Day, and, if not, on the next following Business Day.

Section 9.07 Successors and Assigns

This Agreement shall be binding on, and enure to the benefit of, the parties hereto, the Purchaser's heirs, executors and administrators, and the parties' respective successors and permitted assigns.

Section 9.08 Counterparts

This Agreement may be executed in two counterparts with the same effect as if both parties had signed the same document and all counterparts shall be construed together and will constitute one and the same agreement.

Section 9.09 Third Party Beneficiaries

Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto and their respective successors and permitted assigns, and no person, other than the parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the date first written above.

PETER GRANT SR.

GRANT FOREST PRODUCTS INC.

Per: ______________________
Name: Peter Lynch
Title: Executive Vice President

Per: ______________________
Name:
Title:

Section 9.07 Successors and Assigns

This Agreement shall be binding on, and enure to the benefit of, the parties hereto, the Purchaser's heir, executors and administrators, and the parties' respective successors and permitted assigns.

Section 9.08 Counterparts

This Agreement may be executed in two counterparts with the same effect as if both parties had signed the same document and all counterparts shall be construed together and will constitute one and the same agreement.

Section 9.09 Third Party Beneficiaries

Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto and their respective successors and permitted assigns, and no person, other than the parties hereto and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the date first written above.

PETER GRANT SR.

GRANT FOREST PRODUCTS INC.

Per:

Name: Peter Lynch
Title: Executive Vice President

Per:

Name:
Title:

TAB C

This is Exhibit "C" referred to in the
Affidavit of Peter J. Grant Sr.
Sworn before me this 8th
day of September, 2009

A Commissioner for Taking Affidavits

Monique Marie Plante, a Commissioner, etc.,
District of Timiskaming
for Grant Forest Products Inc. and its associated companies.
Expires May 7, 2011.

7

TO: PETER GRANT SR.

RE: Sale by Grant Forest Products Inc. (the "Vendor") to Peter Grant Sr. (the "Purchaser") of certain tax refunds of the Vendor expected to be received by March 31, 2009 as provided by the Tax Refund Purchase and Sale Agreement dated as of March 31, 2008 (the "Agreement") between the Vendor and the Purchaser

TRANSFER OF SOLD 2008 REFUND

IN CONSIDERATION of the purchase price of Cdn. $10,270,947.38 (which, on the date hereof, is equivalent to US $10 million) paid by the Purchaser to the Vendor, the receipt of which is hereby acknowledged by the Vendor, the Vendor hereby sells, transfers and assigns to the Purchaser, his heirs, executors, administrators and assigns, the Sold 2008 Refund (as defined by the Agreement) in the amount of Cdn. $10,478,857.

This transfer is the transfer referred to in section 7.02(a) of the Agreement with respect to *inter alia* the purchase and sale of such refund, and the provisions of the Agreement shall, despite the delivery of this transfer, continue in full force and effect.

DATED as of the 31st day of March, 2008.

GRANT FOREST PRODUCTS INC.

By: ____________________
Title: Executive Vice President

By: ____________________
Title:

TAB D

This is Exhibit "D" referred to in the
Affidavit of Peter J. Grant Sr.
Sworn before me this 8th
day of September, 2009

A Commissioner for Taking Affidavits

Monique Marie Plante, a Commissioner, etc.,
District of Timiskaming
for Grant Forest Products Inc. and its associated companies.
Expires May 7, 2011.

First Lien Agents

TO: GRANT FOREST PRODUCTS INC.

AND TO: PETER GRANT SR.

RE: Sale by Grant Forest Products Inc. to Peter Grant Sr. of the Sold 2008 Refund (as defined by the Tax Refund Purchase and Sale Agreement dated as of March 31, 2008 (the "Agreement") between Peter Grant Sr., as purchaser, and Grant Forest Products Inc., as vendor, as such Sold 2008 Refund may be adjusted pursuant to the Agreement

AND RE: Credit agreement dated as of October 26, 2005 among Grant Forest Products Inc., Grant U.S. Holdings GP (formerly Grant U.S. Holdings LLP), Grant Forest Products Sales Inc., Grant Alberta Inc., Southeast Properties LLC (formerly Southeast Properties Inc.), Grant Allendale LP (formerly Grant Allendale Inc.), Grant Clarendon LP (formerly Grant Clarendon Inc.), The Toronto-Dominion Bank as Canadian Administrative Agent, Toronto Dominion (Texas) LLC, as U.S. Administrative Agent, and the lenders referred to therein (as amended on March 21, 2007, *inter alia*, to include Grant US Sales Inc. as a guarantor) (as the same may be further supplemented, amended or otherwise modified or restated from time to time, the "Credit Agreement")

PARTIAL DISCHARGE AND RELEASE OF INTEREST

WHEREAS Grant Forest Products Inc. is selling the Sold 2008 Refund (as defined by the Agreement) to Peter Grant Sr. and has requested from the undersigned as agents (collectively, the "Agents") pursuant to the Credit Agreement, this agreement pursuant to Section 10.04 of the Credit Agreement;

NOW THEREFORE the undersigned Agents hereby discharge from any and all present and future security now or hereafter held by them the Sold 2008 Refund (as defined by the Agreement) (as adjusted from time to time in accordance with the Agreement) and all proceeds thereof and hereby release any and all their respective present and future interests therein and in all proceeds thereof.

DATED as of the 31st day of March, 2008.

THE TORONTO-DOMINION BANK as Agent

By:
Title:

Ronald J. Kowpak

By: Vice President, Loan Syndications - Agency
Title:

TORONTO DOMINION (TEXAS) LLC

By:
Title: IAN MURRAY
AUTHORIZED SIGNATORY

By:
Title:

TorDocs_5413401_7.DOC

Second Lien Agents

TO: GRANT FOREST PRODUCTS INC.

AND TO: PETER GRANT SR.

RE: Sale by Grant Forest Products Inc. to Peter Grant Sr. of the Sold 2008 Refund (as defined by the Tax Refund Purchase and Sale Agreement dated as of March 31, 2008 (the "Agreement") between Peter Grant Sr., as purchaser, and Grant Forest Products Inc., as vendor, as such Sold 2008 Refund may be adjusted pursuant to the Agreement

AND RE: Second Lien Credit Agreement dated as of March 21, 2007 among Grant U.S. Holdings GP (formerly Grant U.S. Holdings LLP), as borrower, Grant Forest Products Inc., Grant Forest Products Sales Inc., Grant Alberta Inc., Southeast Properties LLC (formerly Southeast Properties Inc.), Grant Allendale LP (formerly Grant Allendale Inc.), Grant Clarendon LP (formerly Grant Clarendon Inc.) and Grant US Sales Inc., as guarantors, The Toronto-Dominion Bank, as Canadian Collateral Agent, Toronto Dominion (Texas) LLC, as Administrative Agent and U.S. Collateral Agent, and the lenders referred to therein (as the same may be amended, restated, supplemented or replaced from time to time, the "Credit Agreement")

PARTIAL DISCHARGE AND RELEASE OF INTEREST

WHEREAS Grant Forest Products Inc. is selling the Sold 2008 Refund (as defined by the Agreement) to Peter Grant Sr. and has requested from the undersigned as agents (collectively, the "Agents") pursuant to the Credit Agreement, this agreement pursuant to Section 10.04 of the Credit Agreement;

NOW THEREFORE the undersigned Agents hereby discharge from any and all present and future security now or hereafter held by them the Sold 2008 Refund (as defined by the Agreement) (as adjusted from time to time in accordance with the Agreement) and all proceeds thereof and hereby release any and all their respective present and future interests therein and in all proceeds thereof.

DATED as of the 31st day of March, 2008.

THE TORONTO-DOMINION BANK as Agent

By:
Title: Ronald J. Kowpak
Vice President, Loan Syndications - Agency

By:
Title:

TORONTO DOMINION (TEXAS) LLC

By:
Title: IAN MURRAY
AUTHORIZED SIGNATORY

By:
Title:

TorDocs_5417657_6.DOC

TAB E

This is Exhibit "E" referred to in the
Affidavit of Peter J. Grant Sr.
Sworn before me this 8th
day of September, 2009

A Commissioner for Taking Affidavits

Monique Marie Plante, a Commissioner, etc.,
District of Timiskaming
for Grant Forest Products Inc. and its associated companies.
Expires May 7, 2011.

From: Jane Howe [mailto:jhowe@GFP-inc.com] **On Behalf Of** Peter Lynch
Sent: 19 June 2009 11:29 AM
To: Richard Swan
Cc: Peter GrantJr; Peter GrantSr; Peter Lynch
Subject: Tax Refund and Sales Agreement, March 31, 2008

Richard, attached is a copy of the transfer document as well as partial discharges relating to the purchase of the 2008 Tax Rebate.

Following the end of the financial quarter in which the 2008 tax rebate transaction was closed the Company and the Agent received strong objections to the transaction from two of our Lenders who felt that it should not have been proceeded with nor the releases given by the Agent without the express consent of the Lenders themselves. After a number of discussions no further formal action was or has since been taken by those Lenders.

The issue of executing the transfer of a portion of the 2009 tax rebate to Peter Grant Sr., and the discharge of security was discussed in Q1, 2009, by both myself and our CFO at the time (Eric Davis) with the First and Second Lien Agent. We were advised that the Agent would not provide discharges without the direct authority of the requisite number of First and Second Lien Lenders. TD Bank also indicated that in it's position as one of the First Lien Lenders it would not be supportive of the request. The Company was headed for a default of the financial covenants under it's Credit Agreements at the end of Q1, 2009 at the latest and the Company did not provide a written request to the First and Second Lien Agents (which at that time were one and the same - TD Bank) for discharges of security with respect to the portion of the 2009 tax rebate to be purchased by Peter Grant Sr.

This was discussed at various times directly with Peter Grant Sr., and our Board of Directors, by both myself and our CFO, Eric Davis.

Regards
Peter

TAB F

This is Exhibit "F" referred to in the
Affidavit of Peter J. Grant Sr.
Sworn before me this 8th
day of September, 2009

A Commissioner for Taking Affidavits

Monique Marie Plante, a Commissioner, etc.,
District of Timiskaming
for Grant Forest Products Inc. and its associated companies
Expires May 7, 2011.

January 15, 2009

Mr. Peter Grant Sr.
181 Bay Street
Suite 1520
Toronto, ON M5J 2T3

Dear Mr. Grant:

Tax Refund Purchase and Sale Agreement dated as of March 31, 2008 between Peter Grant Sr. and Grant Forest Products Inc. (the "Agreement")

Grant Forest Products Inc. (the "Vendor") refers to the Agreement. All words capitalized in this letter have the meanings specified by the Agreement.

The Vendor confirms our agreement that the parties shall not make the adjustment referred to in section 8.03 of the Agreement with respect to exchange rate fluctuations and therefore the amount of the Sold 2009 Refund shall be reduced so that the fair market value of the Sold 2009 Refund is equivalent to the 2009 Purchase Price Deposit previously paid by the Purchaser, based on the Discount Rate in effect on January 2, 2009 and without increasing the amount of the Sold 2009 Refund due to the payment of the 2009 Purchase Price Deposit prior to the transfer of the Sold 2009 Refund. Accordingly, the 2009 Purchase Price shall be Cdn. $10,270,947 (which, based on the January 2, 2009 exchange rate, was equivalent to US $8,843,802) and the amount of the Sold 2009 Refund shall be the amount in Cdn. dollars, the present value of which, based on such Discount Rate, is Cdn. $10,270,947.

Please sign and return the enclosed copy of this agreement to reflect your agreement to the foregoing.

Yours very truly,

GRANT FOREST PRODUCTS INC.
By:

Title: Peter M. Lynch
Executive Vice President

Peter Grant Sr. hereby agrees to the foregoing.

DATED the day of January, 2009.

Peter Grant Sr.

TAB G

This is Exhibit "G" referred to in the
Affidavit of Peter J. Grant Sr.
Sworn before me this 8th
day of September, 2009

A Commissioner for Taking Affidavits

Monique Marie Plante, a Commissioner, etc.,
District of Timiskaming
for Grant Forest Products Inc. and its associated companies.
Expires May 7, 2011.

Bennett Jones LLP

3400 One First Canadian Place, PO Box 130
Toronto, Ontario, Canada M5X 1A4
Tel: 416.863.1200 Fax: 416.863.1716
www.bennettjones.ca

Richard B. Swan
Direct Line: 416.777.7479
e-mail: swanr@bennettjones.com

June 19, 2009

Mr. Peter Lynch
Executive Vice President
Grant Forest Products Inc.
Suite 1520
181 Bay Street
Toronto, ON M5H 2T3

Dear Sir:

We act for Mr. Peter Grant Sr., as you know.

We write to ensure that all necessary steps have been or immediately will be taken by Grant Forest Products Inc. ("GFPI") to make certain that our client receives what he bargained and paid for pursuant to the Tax Refund Purchase and Sale Agreement dated March 31, 2008 ("the Agreement") between himself and GFPI. All words capitalized in this letter have the meanings specified by the Agreement.

The agreement of the parties was that upon receipt of any part of the 2009 Tax Refund GFPI would hold such funds (in an amount equal to the Sold 2009 Refund) in trust for Mr. Grant, keep them segregated from GFPI's funds, accounts or assets, and pay such trust funds to Mr. Grant. This structure was to ensure that the Sold 2009 Refund, when received by GFPI, would belong to Mr. Grant and that neither GFPI nor any of its creditors could assert any claim to it.

As part of the process for the 2009 Closing it was necessary to determine whether any adjustments to the Sold 2009 Refund were required due to exchange rate fluctuations as provided in section 8.03 of the Agreement. You addressed this issue in your letter to Mr. Grant dated January 15, 2009 in respect of the 2009 Sold Refund.

GFPI has not provided partial discharges and releases from the First and Second Lien Agents under section 7.04 of the Agreement, and we understand that GFPI failed to make formal demand for these from the Lien Agents. Mr. Grant demands that these be sought and provided to him by no later than 5:00 p.m. EDT on June 22, 2009. In the event that these are not provided, Mr. Grant may waive these conditions that were inserted in the Agreement for his benefit, without waiving any of his substantive rights under the Agreement, at law or in equity.

June 19, 2009
Page Two

Further, the Agreement obliged GFPI to deliver a transfer on January 2, 2009 in respect of the 2009 Sold Refund, in a form and substance satisfactory to the Purchaser. Mr. Grant is prepared to treat the January 15, 2009 letter as a satisfactory transfer; if GFPI disagrees, Mr. Grant demands that GFPI deliver a transfer immediately, and in any event by 5 p.m. EDT on June 22, 2009.

Please be advised that Mr. Grant does not waive any substantive rights under the Agreement, at law or in equity. Mr. Grant expects GFPI to fully comply with its obligations, including those arising under the Agreement and as trustee for Mr. Grant.

Yours truly,

BENNETT JONES LLP

Richard B. Swan

IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1986, c. C-36, as amended;
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC. GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP (the "Applicants")

Court File No. 09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIA LIST

Proceeding commenced at Toronto

AFFIDAVIT OF PETER J. GRANT SR.
(Sworn September 8, 2009)

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Richard B. Swan (LSUC No. 32076A)
Telephone: (416) 777-7479
Facsimile: (416) 863-1716

Lawyers for Peter J. Grant Sr.

TAB # 8.

Court File No. CV -09-8247-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

AFFIDAVIT OF BENJAMIN MONTGOMERY

(Sworn September 14, 2009)

I, Benjamin Montgomery, of the City of Vancouver, in the Province of British Columbia, business executive, MAKE OATH AND SAY:

1. I am a Vice President & Director of TD Securities, the wholesale banking division of The Toronto-Dominion Bank ("TD Bank"), working in our corporate credit group. Our group has been actively involved in the administration of the secured loans of TD Bank to Grant Forest Products Inc. ("GFPI") and in respect of the involvement of TD Bank as the Agent under the First Lien Credit Agreement (the "First Lien Agent") and later, as Agent under the Second Lien Credit Agreement (the "Second Lien Agent" or together, the "Agents"), including structuring, negotiating terms and documentation, through syndication and administration of the secured loans of the First Lien Lenders and the Second Lien Lenders and, as such, have personal knowledge of the matters to which I depose in this affidavit. Where facts stated in this affidavit are not based on my personal knowledge, I have stated the source of my information and in all such cases, I verily believe such facts to be true.

2. I have read the affidavit of Peter J. Grant Sr. sworn on September 8, 2009 (the "Grant Affidavit") and this affidavit is sworn in response to the Grant Affidavit.

Introduction

3. The relationships between GFPI and each of the First Lien Agent and the Second Lien Agent (as well as with the first and second lien lenders), are governed by the First and Second Lien Credit Agreements. The provisions of the First Lien Credit Agreement that are relevant to this motion are excerpted and attached hereto as Exhibit "A". The provisions of the Second Lien Credit Agreement that are relevant to this motion are excerpted and attached hereto as Exhibit "B". In this affidavit, I will refer to the First Lien Credit Agreement (as amended by the First Amendment to the Credit Agreement made as of March 21, 2007) and the Second Lien Credit Agreement together as the "Credit Agreements".

4. Until May, 2009, TD Bank was both the First Lien Agent and the Second Lien Agent. When TD Bank resigned as the Second Lien Agent, it was replaced by Bank of New York. TD Bank continues as the First Lien Agent.

5. GFPI and its affiliates used, among other sources of funding, the proceeds of the loans made under the Credit Agreements to fund the construction of the two operating facilities owned by Grant Claredon LP and Grant Allendale LP, both indirect subsidiaries of GFPI (the "Carolina Mills").

6. The development and construction costs of the Carolina Mills substantially exceeded the budgets provided to the Agents pursuant to the Credit Agreements. Additionally, substantial capital spending on non core assets, including a private golf course, a 65ft yacht and an elaborate renovation of the head office in Haileyberry, Ontario, also absorbed significant cash resources. These cost overruns and non-core capital asset expenditures contributed to GFPI'S liquidity issues that ultimately resulted in these proceedings.

7. In the Grant Affidavit, Mr. Grant states that the Tax Refund Purchase and Sale Agreement (the "Agreement") was "devised and structured" by Mr. Lynch and Ross Walker of Fraser Milner. As I understand its import, this description is a reference to the fact that the Agreement was intended to assist GFPI by providing it with additional cash in a way that was "devised and structured" to comply with the Credit Agreements.

8. Accordingly, the Agreement was drafted so as to comply with, among others, the provisions of the Credit Agreements which are excerpted and attached to this affidavit as Exhibits A and B which include the following substantive elements:

(a) The Credit Agreements prohibit financing by way of issuance of securities by GFPI without consent of the lenders (see section 9.04(4) of each of the Credit Agreements);

(b) The Credit Agreements permit sales of assets up to the aggregate annual amount of $10 million (see section 9.04(1)(c) of each of the Credit Agreements);

(c) The Credit Agreements did not require the proceeds of any such permitted sales to be paid on account of the loans because only proceeds of assets sales exceeding $25 million were required to be repaid on the loans (see section 6.03(1)(a) of each of the Credit Agreements); and

(d) The Credit Agreements prohibited GFPI from granting security except Permitted Encumbrances (see section 9.04(9) of each of the Credit Agreements).

9. Because of these provisions and the business purpose of the Agreement, as it was "devised and structured", the Agreement contains the following express provisions:

(a) The transactions contemplated by the Agreement are not an injection of equity but, instead are structured as sales of assets belonging to GFPI, namely portions of 2008 and 2009 tax refunds (the "2008 Refund" and the "2009 Refund" respectively) so that the proceeds paid could be retained and used by GFPI in its business;

(b) The value of interests sold in the 2008 Refund and the 2009 Refund is each limited to $10 million;

(c) The sale of the 2008 Refund was completed immediately on closing in 2008 but the sale of the 2009 Refund was expressly deferred until the 2009 Closing scheduled to occur on January 2, 2009;

(d) The sale of the 2009 Refund would be triggered only by the delivery of a transfer of the 2009 Refund and was not effective until then;

(e) The payment of $10 million on account of the 2008 Refund was a payment of purchase price paid on the 2008 Closing;

(f) The payment of $10 million on account of the 2009 Refund was expressly a deposit to be applied on the purchase price only on the 2009 Closing;

(g) In order to assist GFPI's liquidity position while remaining in compliance with the Credit Agreements, the deposit paid by Mr. Grant was expressly made available under the Agreement for immediate use by GFPI in its business;

(h) The obligation of GFPI under the Agreement, including the obligation to deliver a transfer of the 2009 Refund at the 2009 Closing was not secured such that any loss suffered by Mr. Grant resulting from GFPI'S obligation to complete the 2009 Closing was an unsecured claim against GFPI; and

(i) The 2009 Refund, if received by GFPI prior to the 2009 Closing and/or the transfer of the 2009 Refund, was expressly stated not to be held in trust for Mr. Grant.

10. Contrary to the statement in the Grant Affidavit at paragraph 18, neither the lenders nor the Agents were requested to approve the Agreement and they did not approve the Agreement or the proposed transactions.

11. Rather, the First Lien Agent was advised by GFPI that it intended to enter into the Agreement which GFPI and its counsel advised the First Lien Agent could be performed by GFPI in compliance with the Credit Agreements. I attach hereto as Exhibit "C" is a copy of an e-mail sent by Ross Walker, as counsel for GFPI to the First Lien Agent's counsel confirming that, at the time the Agreement was executed, the Agreement did not breach the Credit Agreements.

12. Neither the Agents nor the lenders agreed to give a partial discharge of the First or Second Lien security in respect of the 2009 Refund and neither Agent was ever requested to give such a partial discharge.

The Transfer was never delivered

13. I understand from the Grant Affidavit that the 2009 Closing did not occur and GFPI never delivered the transfer of the 2009 Refund. Therefore, by the express terms of the Agreement, Mr. Grant has no rights, beneficial or legal in the 2009 Refund.

14. Additionally, as expressly stated in the Agreement, Mr. Grant has no security for any breach by GFPI of its obligation to complete the transactions contemplated by the Agreement. Therefore, if there was such a breach, Mr. Grant must simply be an unsecured creditor for any damages he may suffer as a consequence of any such breach.

Subsequent events and restructuring efforts

15. For the reasons stated by Mr. Lynch in his affidavit supporting the Applicants' application for an Initial Order in these proceedings and, in my view, because of the cost overruns and non-capital expenses described above, the Applicants and their subsidiaries came under severe financial strain in late 2007 that continued through 2008 and 2009.

16. The strains on the Applicants' business were reflected in their reported financial results that were delivered to the Agents pursuant to the Credit Agreements through 2008 and 2009. Through the reporting that I reviewed on behalf of TD Bank, it became apparent that GFPI would be unable to meet the interest coverage financial covenant that, under the First Lien Credit Agreement, would be reinstated when cash payments of interest became due under the Second Lien Credit Agreement in the first quarter of 2009. It was obvious that the weakness in the business operations of GFPI and its subsidiaries would ultimately lead to defaults under the First Lien Credit Agreement as of March 31, 2009 (subject to applicable reporting and cure periods). Further, I was also concerned about GFPI's ability to maintain compliance with the

minimum liquidity covenant in 2009, particularly given that the shareholders injected new capital to maintain compliance with the minimum liquidity covenant twice in 2008.

17. In anticipation of these pending defaults and the financial difficulties facing the Applicants and their subsidiaries, GFPI began to plan its restructuring in late 2008 by taking three important steps. First, GFPI hired Stonecrest Capital Inc. as a restructuring advisor on December 12, 2008. Second, GFPI hired Goldman Sachs as a financial advisor to run a process to attract new investment in its business. Third, and as part of the Goldman Sachs process, GFPI approached TD Bank in January, 2009 seeking terms under which the First Lien Credit Agreement could be modified to encourage new investment.

18. At the time that the Applicants approached the First Lien Agent seeking modifications of the First Lien Credit Agreement to accommodate new investment, the 2009 Closing had not taken place. Further, as noted above, GFPI did not, at any time, request that the Agents deliver partial discharges as required by the Agreement to be delivered on the 2009 Closing.

19. In response to GFPI'S request, TD Bank considered modifications to the Credit Agreement that it would be prepared to present to the First Lien Lenders for consideration. A first draft of a term sheet was sent to GFPI on or about February 20, 2009. Among the express terms of the term sheet was a requirement that the 2009 Refund would not be transferred to Mr. Grant but would be retained by GFPI.

20. TD Bank and GFPI conducted negotiations in respect of the term sheet for a number of weeks. At no time did GFPI object to the requirement proposed by TD Bank that GFPI retain the 2009 Refund. The discussion of the 2009 Refund between GFPI and TD Bank only occurred in the context of the "straw man" restructuring term sheet and not otherwise.

21. In March, GFPI settled a "straw man" term sheet with TD Bank. TD Bank was advised that the "straw man" term sheet would be provided by Goldman Sachs to prospective investors with the authority of GFPI. The "straw man" term sheet expressly required that the 2009 Refund would be retained by GFPI. That "straw man" term sheet was also provided to the

First Lien Lenders on March 16, 2009 as a discussion paper setting out the basis on which the First Lien Lenders would consider restructuring of the First Lien Facility.

22. As a further demonstration that GFPI did not intend to complete the 2009 Closing, the cash flow information that it provided to the Agents expressly contemplated the receipt by GFPI of the entire 2009 Refund by GFPI in the fourth quarter of 2009 and the use of such funds in its business.

Concluding Statements

23. The Agreement was executed in March 2008 contemplating a transfer of the 2009 Refund to Mr. Grant only on the delivery of transfer to him in 2009. Mr. Grant expressly obtained no legal or beneficial interest in the 2009 Refund until the transfer was delivered.

24. No transfer of the 2009 Refund has been delivered to date and consequently Mr. Grant has no interest in the 2009 Refund.

25. The fact that no transfer had been delivered was not inadvertent or accidental. It was deliberate and, from our observation, a necessary step to preserve cash as the business of GFPI struggled with tight liquidity. Further, as Mr. Grant was the CEO and a member of the board of directors of GFPI, he must have participated in the decision not to complete the transfer of the 2009 Refund.

26. This affidavit is sworn in response to the Grant Affidavit and for no improper purpose.

SWORN before me at the City of Vancouver, in the Province of British Columbia this 14th day of September, 2009.

Notary Public by and for the Province of British Columbia

BENJAMIN MONTGOMERY

CONRAD REGO
Barrister & Solicitor
McCarthy Tétrault LLP
1300 - 777 DUNSMUIR STREET
VANCOUVER, B.C. V7Y 1K2
DIRECT 604-643-5682

TAB A

This is Exhibit "A" referred to in the
Affidavit of **BENJAMIN MONTGOMERY**
sworn before me, this 14th day of **September, 2009**

A COMMISSIONER FOR TAKING AFFIDAVITS

CONRAD REGO
Barrister & Solicitor
McCarthy Tétrault LLP
1300 - 777 DUNSMUIR STREET
VANCOUVER, B.C. V7Y 1K2
DIRECT 604-643-5882

(vi) the aggregate amount at which any shares of such Person that are redeemable or retractable at the option of the holder of such shares (except where the holder is such Person) may be redeemed or retracted prior to the U.S. Non-Revolving Term Facility Maturity Date for cash or obligations constituting Debt or any combination thereof; and

(vii) the Aggregate Exposure of such Person;

provided, however, that there will not be included for the purpose of this definition any obligation that is on account of (A) reserves for deferred income taxes or general contingencies, (B) minority interests in Subsidiaries, or (C) trade accounts payable and accrued liabilities (including contract loans and income taxes payable) incurred in the ordinary course of business.

"Default" has the meaning set forth in Schedule A.

"Deposit Amount" has the meaning set forth in Section 5.02(12).

"Depreciation Expense" means, for any period with respect to any Person, depreciation, amortization, depletion and other like reductions to income of such Person for such period not involving any outlay of cash.

"Disposition" means, with respect to a Person, any sale, assignment, transfer, conveyance, lease, licence or other disposition of any nature or kind whatsoever of any Property or of any right, title or interest in or to any Property that is out of the ordinary course of business of such Person, and the verb "Dispose" has a corresponding meaning.

"Disposition Trigger Event" means any Disposition by a Restricted Party (other than a Disposition to another Restricted Party), provided, however, that (i) any such Disposition in respect of Net Proceeds up to an aggregate amount not to exceed US $25,000,000 for each financial year of the Canadian Borrower will not constitute a Disposition Trigger Event, and (ii) any such Disposition will not constitute a Disposition Trigger Event if the relevant Restricted Party notifies the Administrative Agent within 30 days after such Disposition that it plans to reinvest the Net Proceeds of such Disposition in Capital Expenditures as promptly as practicable, but in any event within 180 days after such Disposition; provided further that, if a Restricted Party delivers a notice with respect to a Disposition as contemplated by clause (ii) above, and if, on the expiration of the 180-day period less than all the Net Proceeds of such Disposition have been reinvested or applied as provided above, then a Disposition Trigger Event will be deemed to have occurred at the expiration of such 180-day period with Net Proceeds equal to the Net Proceeds of such Disposition that have not been reinvested or applied.

"Distribution" means (i) any payment, declaration of dividend or other distribution, whether in cash or Property, (but expressly excluding any distribution by way of the payment of dividends by the issuance of equity securities of an issuer) to any holder of shares of any class of any Borrower or any other Restricted Party, (ii) any repurchase, redemption, retraction or other retirement or purchase for cancellation of shares of any Borrower or any other Restricted Party, or of any options, warrants or other rights to acquire any of such shares, or (iii) any payment or repayment of any advance, loan, extension of credit, capital contribution to, or guarantee of any obligation of, any Person that holds Equity of any Borrower or any other Restricted Party; but, in each case, excludes any such payments made by a Restricted Party to any other Restricted Party and amounts prepaid to employees of a Restricted Party for ordinary course employee expenses.

"Documentation" means all systems, user, technical or other documentation or information (including any input or output formats, program listings, narrative descriptions, operating instructions or manuals, specifications, user guides and systems, user or technical manuals) that have been, are or may be provided in

"Exposure" has the meaning set forth in the Aggregate Repricing Agreement and, where applicable, is calculated in the manner specified by the Aggregate Repricing Agreement.

"Federal Funds Effective Rate" means, for any day, a fluctuating rate of interest expressed as a percentage rate *per annum* equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers as published for such day (or, if such day is not a Business Day, for the preceding Business Day) by the Federal Reserve Bank of New York or, for any day on which that rate is not published for that day by the Federal Reserve Bank of New York, the simple average of the quotations for that day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

"Final Maturity Date" means (i) with respect to the Revolving Facility, the Revolving Facility Maturity Date, and (ii) with respect to the U.S. Non-Revolving Term Facility, the U.S. Non-Revolving Term Facility Maturity Date.

"Financial Assistance" means, without duplication and with respect to any Person, all loans granted by that Person and guarantees or Contingent Obligations incurred by that Person for the purpose of or having the effect of providing financial assistance to another Person or Persons, including letters of guarantee, letters of credit, legally binding comfort letters or indemnities issued in connection therewith, endorsements of bills of exchange (other than for collection or deposit in the ordinary course of business), obligations to purchase assets regardless of the delivery or non-delivery thereof and obligations to make advances or otherwise provide financial assistance to any other Person; provided that "Financial Assistance" shall not include amounts prepaid to employees of a Person for ordinary course employee expenses, or amount loaned to employees to finance their purchases of houses up to the principal amount of U.S. $150,000 per loan and up to an aggregate principal amount of U.S. $500,000 for all such housing loans.

"Financing" means, with respect to any Person, the raising of funds by issuing debt obligations, including convertible or exchangeable debt obligations (but excluding Subordinated Debt) or by borrowing from a lender or other financial institution, or by issuing securities (however designated, whether voting or non-voting or whether certificated or non-certificated) of capital of such Person and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such Person.

"Footner Buyout" means the acquisition by the Canadian Borrower (or any of the other Restricted Parties) of all or any portion of the 50% equity interest in the Footner Joint Venture currently owned by Ainsworth Lumber Co. Ltd. or one or more of its Subsidiaries or Affiliates, and the shares, currently owned by Ainsworth Lumber Co. Ltd. or one or more of its Subsidiaries or Affiliates, of Footner Forest Products Ltd., the owner of the assets comprising the Footner Mills located in High Level, Alberta.

"Footner Buyout Financing" has the meaning set forth in clause (xiii) of the definition of Permitted Encumbrances.

"Footner Joint Venture" means the unincorporated joint venture in the oriented strand board mill, in High Level, Alberta, also known as the "Footner Mill", owned equally by the Canadian Borrower and Ainsworth Lumber Co. Ltd. or one or more of its Subsidiaries established pursuant to the Footner Joint Venture Agreement.

"Footner Joint Venture Agreement" means the memorandum of agreement dated December 9, 1999 between Ainsworth Lumber Co. Ltd. and Grant Forest Products Corp. together with the assignment agreement relating thereto made as of December 9, 1999 between Grant Forest Products Corp. and the Canadian

6.02 **Mandatory Repayment - U.S. Non-Revolving Term Facility**

The U.S. Borrower will repay in full the outstanding principal amount of all Loans and other Obligations under the U.S. Non-Revolving Term Facility on or before the U.S. Non-Revolving Term Facility Maturity Date.

6.03 **Additional Repayment and Commitment Reduction on Dispositions and Financings – Revolving Facilities and U.S. Non-Revolving Term Facility**

(1) (a) Except as otherwise provided in this Section 6.03, if a Restricted Party receives Net Proceeds in the form of Cash or Cash Equivalents from a Disposition that gives rise to a Disposition Trigger Event, or from insurance proceeds pursuant to Section 9.01(8) hereof, which, in accordance with this Agreement, are payable to the Lenders to repay the Credit Facilities, the applicable Borrower will have an obligation under this Section 6.03 to make a repayment under the Revolving Facilities and the U.S. Non-Revolving Term Facility, on a *pro rata* basis, in an amount equal to such Net Proceeds in the form of Cash or Cash Equivalent. The applicable Borrower will notify the Administrative Agent in writing of any such mandatory prepayment required to be made pursuant to this Section 6.03(1) at least five Business Days prior to the date of such prepayment. Each such notice will specify the date of such prepayment and the amount of such prepayment. The Administrative Agent will promptly notify each Lender of the contents of the Borrower's prepayment notice and of such Lender's *pro rata* share of the prepayment. Notwithstanding the foregoing and subject to paragraph (b), the U.S. Borrower will not be required to make any prepayment of the U.S. Non-Revolving Term Facility pursuant to this Section 6.03 on or prior to the fifth anniversary of the date of the last Drawdown of the U.S. Non-Revolving Term Facility (the "Fifth Anniversary") to the extent that the amount thereof, when aggregated with all prior mandatory prepayments of the U.S. Non-Revolving Term Facility, would exceed 25% of the total principal amount of the U.S. Non-Revolving Term Facility advanced; provided that such excess amount which relates exclusively to the insurance proceeds referred to in paragraph (b) of the definition of Net Proceeds which would have been applied to prepayment of the U.S. Non-Revolving Term Facility but for this sentence of Section 6.03(1) will be deposited by the applicable Borrower into a designated cash collateral account maintained with the Administrative Agent (or maintained with such other Person as otherwise directed by the Administrative Agent) until so applied on the Business Day immediately following the Fifth Anniversary.

(b) A Disposition Trigger Event will constitute an event requiring the U.S. Borrower to, within five Business Days following any Disposition Trigger Event, make an offer to the Lenders, by notice to the Administrative Agent, to prepay an aggregate principal amount of the U.S. Non-Revolving Term Facility equal to the applicable *pro rata* amount of Net Proceeds resulting from such Disposition Trigger Event, and such amount will be applied in the manner specified in Section 6.03(2). Any failure of the U.S. Borrower to make such offer or to effect such prepayment following acceptance of such offer will constitute an Event of Default under this Agreement. If any Lender declines such offer, the U.S. Borrower shall be entitled to retain the applicable amount.

(2) Subject to Section 6.03(1), each repayment under this Section 6.03 will be applied against the repayments of principal required under Section 6.03(1) without regard to the respective maturity dates of any Credit Facility, and each such repayment will be applied to, and will permanently reduce the Commitment of each Lender in respect of the Revolving Term Facilities and the U.S. Non-Revolving Term Facility, on a *pro rata* basis, by the amount of the Lender's Applicable Percentage of such repayment. If the applicable Borrower by reason of any such repayment, reduction or cancellation (a) pays any LIBO Rate Loans prior to the end of the applicable Interest Period, the Borrower will compensate the Lenders for any loss or expense that the Lenders incur as a result thereof, including any breakage costs, or (b) pays any Bankers' Acceptances or BA Equivalent Notes prior to their respective maturity dates or discharges its obligation to the Issuing Bank in respect of outstanding Letters of Credit, such amount will be paid as collateral to the Administrative

(4) Compliance Certificate. A Compliance Certificate in the form of Schedule 1.01(a) concurrently with the delivery of the financial statements referred to in Sections 9.03(1) and (2), commencing with the first fiscal quarter end after the date hereof.

(5) Business Plan. As soon as available and in any event within 60 days after the end of its fiscal year, provide the Administrative Agent with a consolidated detailed business plan for the Canadian Borrower for the following five years (the "Business Plan"), detailed financial projections and capital budgets from the date of delivery of such financial projections and capital budgets to the Credit Facilities, with a description of all assumptions used in respect of the preparation of the Business Plan, including the financial projections, capital budgets and all other future oriented financial information; provided, however, at no time will such financial projections and capital budgets be less than five years, in each case consisting of a balance sheet, statement of income and retained earnings and statement of changes of cash flow for such year.

(6) Notification Respecting Debt. Promptly notice of any amendment to, or waiver of, any material provisions of any agreement respecting Debt of the Borrowers or of any of their Subsidiaries, including any provision relating to the rate of interest payable on such Debt, the amount of Debt that may be incurred under such agreement, the term of such Debt, the security therefor or events of default or the maintenance of financial ratios thereunder.

(7) Notification of Actions. Promptly notice of any legal action taken by any creditor (other than the Lenders) to recover amounts outstanding respecting Debt of any Borrower or any Guarantor.

(8) Other Information. Promptly such other information as it may reasonably request respecting any Borrower or any Guarantor, or, to the extent that the Borrowers are not prevented from providing such information by contract or undertaking entered into with or provided to any other Person, respectively, any other corporation, partnership, limited partnership or other entity in which any Borrower or any Guarantor has any financial interest provided that the Administrative Agent will maintain the confidentiality of all information it receives in accordance with usual requirements of banker/customer confidentiality and does not disclose or use it except for the purposes of this Agreement.

(9) Notice of Change. Without limiting the generality of Section 9.03(8), promptly (i) notice of any additional Relevant Jurisdiction in respect of any Borrower or any Guarantor, and (ii) notice of any change (financial or otherwise) in the business, operations or condition (financial or otherwise) of any Borrower or any Guarantor that has caused or may cause a Material Adverse Change.

(10) Hedge Reporting. The Borrowers on their own behalf and on behalf of other Restricted Parties shall deliver to the Administrative Agent (or such other person designated by the Administrative Agent) a certificate setting out the details of each Hedge Arrangement forthwith upon entering into a Hedge Arrangement, with each such certificate also setting out the details of all then outstanding Hedge Arrangements and also certifying in relation to all Hedge Arrangements that they comply with the limitations set forth in Section 9.04(13).

9.04 Negative Covenants

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Required Lenders, each Borrower will not, and will ensure that each Restricted Party will not:

(1) Disposition of Property. Dispose of, in one transaction or in a series of transactions, all or any part of its Property, whether now or hereinafter acquired, except for:

(a) the Bush Lots;

(b) Property sold by one Restricted Party to another Restricted Party;

(c) Property sold for fair market value, provided that the total amount of the gross proceeds derived from all such Dispositions made in any single fiscal year of the Canadian Borrower does not in the aggregate exceed U.S. $10,000,000; and

(d) Dispositions made in accordance with customary trade terms of tangible personal property that would reasonably be considered to be the subject matter of Dispositions by it in the normal course of its business for the purposes of carrying on the same or Dispositions of tangible personal property that is worn out, obsolete or no longer useful for the purpose of carrying on its business.

(2) No Consolidation, Amalgamation, etc. Except with a Borrower or Borrowers or with or as between Guarantors, consolidate, amalgamate or merge with any other Person, enter into any corporate reorganization or other transaction or series of transactions intended to effect or otherwise permit a change in its existing corporate or capital structure, in each case whereby all or substantially all of its undertaking or assets would become the property of another Person, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution of any other Guarantor; provided that with respect to any such transaction with a Borrower or Borrowers or with or as between Guarantors no such transaction is permitted if (i) such event may result in the assets of the Borrower or a Guarantor becoming subject to an Encumbrance (other than a Permitted Encumbrance), (ii) such event may result in the occurrence of a Default or Event of Default, (iii) a Default or an Event of Default has or will have occurred and be continuing, (iv) the Person resulting from such transaction is not incorporated or organized under the laws of Canada or a province or territory thereof or the laws of any State of the United States, (v) the Person resulting therefrom is not bound by the Obligations of the Borrowers or Guarantors, and (vi) the Borrowers are unable to deliver to the Administrative Agent an opinion of Borrowers' counsel, acceptable to the Administrative Agent, acting reasonably, that such transaction complies with applicable Requirements of Law.

(3) No Change of Name. Change its name without providing the Administrative Agent with 30 days' prior written notice thereof.

(4) No Financings. Create, incur, assume or permit any Debt (including Debt of the Footner Joint Venture) to remain outstanding, other than Permitted Debt or complete any Financings (other than the Footner Buyout Financing).

(5) No Investments. Other than a Permitted Investment, make, directly or indirectly, any Investment except the Borrower or any Guarantor may make an Investment if:

(a) no Event of Default or Default has occurred and is continuing at the time such Investment is made or would result from the making of such Investment; and

(b) such Investment is consistent in all material respects with the Business Plan for the fiscal year of the Canadian Borrower in which such Investment is made and is made using cash resulting from the operations of the Borrowers or a Guarantor;

provided that if the Investment is in a Person that is not a wholly-owned Subsidiary of any Borrower or a Guarantor, the aggregate of all such Investments will not exceed Cdn. $10,000,000;

(6) No Change in Business. Other than the construction and operation of the Mills, engage, directly or indirectly, in a line of business that would be material and substantially different from those lines

of business carried on by it as of the Closing Date, except that it may engage in any reasonable extension, development or expansion thereof or in any business ancillary thereto.

(7) No Financial Assistance. Give any Financial Assistance (other than to other Restricted Parties).

(8) No Distributions. Make any Distribution if (i) the Total Debt to Capitalization Ratio, based on the most recently completed fiscal quarter is, or would be after giving effect to the proposed Distribution, equal to or greater than 50%, or (ii) the Borrowers would not be entitled to make a Drawdown of U.S. $1.00 under Credit Facilities after giving effect to the proposed Distribution, or (iii) if an Event of Default or Default has occurred and is continuing at the time such proposed Distribution is to be made or would result from the making of such Distribution; provided, however, that where the requirements of subparagraph (i), (ii) or (iii) do not prevent a Distribution from being made, the amount of the proposed Distribution will not exceed an amount determined in accordance with the following:

Free Cash Flow	Debt: Capitalization 40 to 50%	Debt: Capitalization <40%
<Cdn. $30 million	nil	nil
Cdn. $30 to Cdn. $75 million	50% of Free Cash Flow	60% of Free Cash Flow
>Cdn. $75 million	60% of Free Cash Flow	75% of Free Cash Flow

The foregoing restrictions on Distributions will not apply to any payments by the Canadian Borrower by way of dividends on its existing outstanding Preferred Shares in an aggregate dividend amount not exceeding Cdn. $6,000,000 for each fiscal year so long as no Event of Default or Default has occurred and is continuing at the time any such Preferred Shares dividend Distribution is made or would result from the making of such Preferred Shares dividend Distribution.

(9) No Encumbrances. Create, incur, assume or permit to exist or permit any Restricted Party to create, incur, assume or permit to exist any Encumbrance upon any of its Property (including upon any of the Property of the Footner Joint Venture) except Permitted Encumbrances.

(10) Capital Expenditures. In any fiscal year of the Canadian Borrower beginning on or after January 1, 2006 make, or enter into any agreement which would require it to make, any Capital Expenditures in excess of the Permitted Capital Expenditures.

(11) No Change to Year End. Make any change to its fiscal year end from December 31 in each year.

(12) No Continuance. Continue into any other jurisdiction.

(13) Hedge Arrangements. Enter into or permit to be outstanding at any time any Hedge Arrangement unless it meets the requirements of paragraphs (a) and (b) below:

(a) such Hedge Arrangement is either (i) a rate swap, interest rate option, forward rate transaction, forward foreign exchange transaction or cross currency rate swap transaction entered into with a Lender or (ii) a Commodity Hedge Arrangement; and

(b) such Hedge Arrangement is designed to protect the Restricted Party against fluctuations in currency exchange rates, interest rates or commodity prices and such Hedge Arrangement has been entered into by the Restricted Party *bona fide* and in good faith in the ordinary

TAB B

This is Exhibit "B" referred to in the
Affidavit of **BENJAMIN MONTGOMERY**
sworn before me, this 14th day of **September, 2009**

A COMMISSIONER FOR TAKING AFFIDAVITS

CONRAD REGO
Barrister & Solicitor
McCarthy Tétrault LLP
1300 - 777 DUNSMUIR STREET
VANCOUVER, B C. V7Y 1K2
DIRECT 604-643-5682

Administrative Agent by a certificate from the Independent Engineer, in form and substance satisfactory to the Administrative Agent.

"**Credit Facility**" means the Loans advanced and PIK Interest Amounts accrued under this Agreement.

"**Debt**" means, without duplication, with respect to any Person, all obligations that, in accordance with GAAP, would then be classified as a liability of such Person, and, without duplication, includes, with respect to such Person,

(i) an obligation in respect of borrowed money or for the deferred purchase price of Property or services or an obligation that is evidenced by a note, bond, debenture or any other similar instrument;

(ii) a transfer with recourse or with an obligation to repurchase, to the extent of the liability of such Person with respect thereto;

(iii) an obligation under a Capital Lease;

(iv) a reimbursement obligation or other obligation in connection with a bankers' acceptance or any similar instrument, or letter of credit or letter of guarantee issued by or for the account of such Person;

(v) a Contingent Obligation to the extent that the primary obligation so guaranteed would be classified as "Debt" (within the meaning of this definition) of such Person;

(vi) the aggregate amount at which any shares of such Person that are redeemable or retractable at the option of the holder of such shares (except where the holder is such Person) may be redeemed or retracted prior to the Maturity Date for cash or obligations constituting Debt or any combination thereof; and

(vii) the Aggregate Exposure of such Person;

provided, however, that there will not be included for the purpose of this definition any obligation that is on account of (A) reserves for deferred income taxes or general contingencies, (B) minority interests in Subsidiaries, or (C) trade accounts payable and accrued liabilities (including contract loans and income taxes payable) incurred in the ordinary course of business.

"**Default**" means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

"**Depreciation Expense**" means, for any period with respect to any Person, depreciation, amortization, depletion and other like reductions to income of such Person for such period not involving any outlay of cash.

"**Disposition**" means, with respect to a Person, any sale, assignment, transfer, conveyance, lease, licence or other disposition of any nature or kind whatsoever of any Property or of any right, title or interest in or to any Property that is out of the ordinary course of business of such Person, and the verb "Dispose" has a corresponding meaning.

"**Disposition Trigger Event**" means any Disposition by a Restricted Party (other than a Disposition to another Restricted Party), provided, however, that (i) any such Disposition in respect of Net Proceeds up to an aggregate amount not to exceed $25,000,000 for each financial year of GFP will not constitute a Disposition

Trigger Event, and (ii) any such Disposition will not constitute a Disposition Trigger Event if the relevant Restricted Party notifies the Administrative Agent within 30 days after such Disposition that it plans to reinvest the Net Proceeds of such Disposition in Capital Expenditures as promptly as practicable, but in any event within 180 days after such Disposition; provided further that, if a Restricted Party delivers a notice with respect to a Disposition as contemplated by clause (ii) above, and if, on the expiration of the 180-day period less than all the Net Proceeds of such Disposition have been reinvested or applied as provided above, then a Disposition Trigger Event will be deemed to have occurred at the expiration of such 180-day period with Net Proceeds equal to the Net Proceeds of such Disposition that have not been reinvested or applied.

"Distribution" means (i) any payment, declaration of dividend or other distribution, whether in cash or Property, (but expressly excluding any distribution by way of the payment of dividends by the issuance of equity securities of an issuer) to any holder of shares of any class of the Borrower or any other Restricted Party, (ii) any repurchase, redemption, retraction or other retirement or purchase for cancellation of shares of the Borrower or any other Restricted Party, or of any options, warrants or other rights to acquire any of such shares, or (iii) any payment or repayment of any advance, loan, extension of credit, capital contribution to, or guarantee of any obligation of, any Person that holds Equity of the Borrower or any other Restricted Party; but, in each case, excludes any such payments made by a Restricted Party to any other Restricted Party and amounts prepaid to employees of a Restricted Party for ordinary course employee expenses.

"Documentation" means all systems, user, technical or other documentation or information (including any input or output formats, program listings, narrative descriptions, operating instructions or manuals, specifications, user guides and systems, user or technical manuals) that have been, are or may be provided in connection with Software and includes any corrections, replacements, modifications or releases thereof or thereto, whether distributed in print, magnetic, electronic, video or other format.

"EBITDA" means, with respect to any Person for any period, the Net Income of such Person for such period plus, without duplication and to the extent reflected as a charge in the statement of net income included in the financial statements of such Person:

(i) all amounts deducted in the calculation thereof in respect of Depreciation Expense, and current and deferred taxes, net losses of Subsidiaries and any other losses incurred in respect of investments that are accounted for on an equity basis;

(ii) Total Interest Expense;

(iii) any extraordinary, non-recurring or unusual expenses or losses (including, whether or not otherwise includable as a separate item in such statement of net income, losses on sales outside of the ordinary course of business or on sales of Property of a Restricted Party which is leased back to any Restricted Party); and

(iv) unrealized losses from Hedge Arrangements to the extent that they have been used in determining Net Income as a matter of GAAP;

less, without duplication and to the extent reflected as a credit in such statement of net income,

(v) any reduction of deferred taxes;

(vi) amounts included in the calculation thereof in respect of net profits of Subsidiaries and any other profits in respect of investments that are accounted for on an equity basis;

under Section 5.03(2)), (x) any United States withholding tax unless such withholding taxes would not have been imposed but for a change in law, rule, regulation or treaty or in the published and official administration, interpretation or application thereof by any Governmental Authority occurring after such Lender becomes a party hereto (or designates a new lending office) (such taxes, "Statutory Change Withholding Tax" and such changes, "Statutory Change in Law"), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such Statutory Change Withholding Tax pursuant to Section 5.02, and (y) any withholding tax that is attributable to such Lender's failure (other than as a result of a Statutory Change in Law) to comply with Section 5.02(6).

"Exposure" has the meaning set forth in the Aggregate Repricing Agreement and, where applicable, is calculated in the manner specified by the Aggregate Repricing Agreement.

"Federal Funds Effective Rate" means, for any day, a fluctuating rate of interest expressed as a percentage rate *per annum* equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers as published for such day (or, if such day is not a Business Day, for the preceding Business Day) by the Federal Reserve Bank of New York or, for any day on which that rate is not published for that day by the Federal Reserve Bank of New York, the simple average of the quotations for that day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

"Financial Assistance" means, without duplication and with respect to any Person, all loans granted by that Person and guarantees or Contingent Obligations incurred by that Person for the purpose of or having the effect of providing financial assistance to another Person or Persons, including letters of guarantee, letters of credit, legally binding comfort letters or indemnities issued in connection therewith, endorsements of bills of exchange (other than for collection or deposit in the ordinary course of business), obligations to purchase assets regardless of the delivery or non-delivery thereof and obligations to make advances or otherwise provide financial assistance to any other Person; provided that "Financial Assistance" shall not include amounts prepaid to employees of a Person for ordinary course employee expenses, or amount loaned to employees to finance their purchases of houses up to the principal amount of $150,000 per loan and up to an aggregate principal amount of $500,000 for all such housing loans.

"Financing" means, with respect to any Person, the raising of funds by issuing debt obligations, including convertible or exchangeable debt obligations (but excluding Subordinated Debt) or by borrowing from a lender or other financial institution, or by issuing securities (however designated, whether voting or non-voting or whether certificated or non-certificated) of capital of such Person and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such Person.

"First Lien Credit Agreement" means the Credit Agreement (as amended as of the date hereof and as further amended, restated, refinanced, supplemented or otherwise modified from time to time in accordance with the Intercreditor Agreement) dated as of October 26, 2005 among GFP, the Borrower, the other Guarantors party thereto, Toronto-Dominion Bank, as administrative agent for certain lenders, Toronto Dominion (Texas) LLC, as administrative agent for certain lenders, and the other parties thereto.

"Footner Buyout" means the acquisition by GFP (or any of the other Restricted Parties) of all or any portion of the 50% equity interest in the Footner Joint Venture currently owned by Ainsworth Lumber Co. Ltd. or one or more of its Subsidiaries or Affiliates, and the shares, currently owned by Ainsworth Lumber Co. Ltd. or one or more of its Subsidiaries or Affiliates, of Footner Forest Products Ltd., the owner of the assets comprising the Footner Mills located in High Level, Alberta.

applicable lenders thereunder consent to such prepayment) or all obligations under the First Lien Credit Agreement have been paid in full (excluding contingent indemnification obligations not yet due and payable).

6.03 Mandatory Prepayments

(1) (a) Except as otherwise provided in this Section 6.03, if a Restricted Party receives Net Proceeds in the form of Cash or Cash Equivalents from (i) a Disposition that gives rise to a Disposition Trigger Event, or from insurance proceeds pursuant to Section 9.01(8) hereof, or (ii) the issuance of Equity (other than Equity contributions to provide required liquidity or fund construction of the Mills and Equity issuances to a Restricted Party or as part of the Permitted Restructuring) or Debt (other than Subordinated Debt, Debt issued under the First Lien Credit Agreement and Debt issued to a Restricted Party or as part of the Permitted Restructuring), the Borrower will have an obligation under this Section 6.03 to make a prepayment of the Loans and PIK Interest Amounts in an amount equal to such Net Proceeds in the form of Cash or Cash Equivalent. In addition, except as provided in Section 6.03(6), within 145 days after each fiscal year end, the Borrower will prepay the Loans and PIK Interest Amounts in an amount equal to the Excess Cash Flow Prepayment for such fiscal year. All such prepayments will be applied *pro rata* to the outstanding Loans and PIK Interest Amounts. The Borrower will notify the Administrative Agent in writing of any such mandatory prepayment required to be made pursuant to this Section 6.03(1) at least five Business Days prior to the date of such prepayment. Each such notice will specify the date of such prepayment and the amount of such prepayment. The Administrative Agent will promptly notify each Lender of the contents of the Borrower's prepayment notice and of such Lender's *pro rata* share of the prepayment. Notwithstanding the foregoing and subject to paragraph (b), the Borrower will not be required to make any prepayment pursuant to this Section 6.03 on or prior to the fifth anniversary of the date of the advance of the Loans (the "Fifth Anniversary") to the extent that the amount thereof, when aggregated with all prior mandatory prepayments pursuant to this Section 6.03 and all other prior mandatory repayments and prepayments of PIK Interest Amounts and principal of the Loans, would exceed 25% of the principal amount of the Credit Facility advanced; provided that the excess amount which relates exclusively to the insurance proceeds referred to in paragraph (b) of the definition of Net Proceeds which would have been applied to prepayment of the Loans and PIK Interest Amounts but for this sentence of Section 6.03(1) will be deposited by the Borrower into a designated cash collateral account maintained with the U.S. Collateral Agent until so applied on the Business Day immediately following the Fifth Anniversary and all other amounts which would have been applied to prepayment of the Loans and PIK Interest Amounts but for this sentence of Section 6.03(1) will, subject to Section 6.03(1)(b), be paid on the Business Day immediately following the Fifth Anniversary without being required to be deposited in a cash collateral account.

(b) A Disposition Trigger Event will constitute an event requiring the Borrower to, within five Business Days following such event, make an offer to the Lenders, by notice to the Administrative Agent, to prepay the Loans and PIK Interest Amounts in the amount of such prepayment, and such amount will be applied in the manner specified in Section 6.03(2). Any failure of the Borrower to make such offer or to effect such prepayment following acceptance of such offer will constitute an Event of Default under this Agreement. If any Lender declines such offer, the Borrower shall be entitled to retain the applicable amount.

(2) The Borrower will pay to the Administrative Agent all accrued fees and other amounts, and accrued and unpaid interest in respect of the Loans (except for the PIK Interest Amounts other than as required by Section 6.03(1)(a)) to, but excluding, the effective date of any repayment or prepayment on the date of such repayment or prepayment.

(3) Section 6.03(1) will not apply upon the occurrence of and during the continuance of an Event of Default in which case all such Net Proceeds will forthwith be applied to pay down the Loans and PIK Interest Amounts, subject to Sections 6.03(5) and (6).

certificate setting out the details of each Hedge Arrangement forthwith upon entering into a Hedge Arrangement, with each such certificate also setting out the details of all then outstanding Hedge Arrangements and also certifying in relation to all Hedge Arrangements that they comply with the limitations set forth in Section 9.04(13).

9.04 Negative Covenants

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Required Lenders, neither GFP nor the Borrower will, and will ensure that each Restricted Party will not:

(1) Disposition of Property. Dispose of, in one transaction or in a series of transactions, all or any part of its Property, whether now or hereinafter acquired, except for:

(a) the Bush Lots;

(b) Property sold by one Restricted Party to another Restricted Party;

(c) Property sold for fair market value, provided that the total amount of the gross proceeds derived from all such Dispositions made in any single fiscal year of GFP does not in the aggregate exceed $10,000,000; and

(d) Dispositions made in accordance with customary trade terms of tangible personal property that would reasonably be considered to be the subject matter of Dispositions by it in the normal course of its business for the purposes of carrying on the same or Dispositions of tangible personal property that is worn out, obsolete or no longer useful for the purpose of carrying on its business.

(2) No Consolidation, Amalgamation, etc. Except with the Borrower or with or as between Guarantors, consolidate, amalgamate or merge with any other Person, enter into any corporate reorganization or other transaction or series of transactions intended to effect or otherwise permit a change in its existing corporate or capital structure, in each case whereby all or substantially all of its undertaking or assets would become the property of another Person, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution of any other Guarantor; provided that with respect to any such transaction with the Borrower or with or as between Guarantors no such transaction is permitted if (i) such event may result in the assets of the Borrower or a Guarantor becoming subject to an Encumbrance (other than a Permitted Encumbrance), (ii) such event may result in the occurrence of a Default or Event of Default, (iii) a Default or an Event of Default has or will have occurred and be continuing, (iv) the Person resulting from such transaction is not incorporated or organized under the laws of Canada or a province or territory thereof or the laws of any State of the United States; provided, in the case of the Borrower, that the Borrower must at all times continue to be organized under the laws of the United States, (v) the Person resulting therefrom is not bound by the Obligations of the Borrower or Guarantors, as applicable, (vi) the Borrower is unable to deliver to the Administrative Agent an opinion of Borrower's counsel, acceptable to the Administrative Agent, acting reasonably, that such transaction complies with applicable Requirements of Law or (vii) in the case of the Borrower, to the extent applicable, the Borrower is not the surviving entity. Notwithstanding the foregoing, GFP and its Subsidiaries may effect the Permitted Restructuring.

(3) No Change of Name. Change its name without providing the Administrative Agent with 30 days' prior written notice thereof (except that such notice shall be not fewer than five (5) Business Days if the change of name occurs as part of the Permitted Restructuring).

(4) No Financings. Create, incur, assume or permit any Debt (including Debt of the Footner Joint Venture) to remain outstanding, other than Permitted Debt, or complete any Financings (other than the Footner Buyout Financing).

(5) No Investments. Other than a Permitted Investment, make, directly or indirectly, any Investment except the Borrower or any Guarantor may make an Investment if:

(a) no Event of Default or Default has occurred and is continuing at the time such Investment is made or would result from the making of such Investment; and

(b) such Investment is consistent in all material respects with the Business Plan for the fiscal year of the Borrower in which such Investment is made and is made using cash resulting from the operations of the Borrower or a Guarantor;

provided that if the Investment is in a Person that is not a wholly-owned Subsidiary (other than the Excluded Subsidiary) of the Borrower or a Guarantor, the aggregate of all such Investments will not exceed Cdn. $10,000,000; provided further that the Restricted Parties may make nominal Investments in the Excluded Subsidiary in amounts satisfactory to the Administrative Agent.

(6) No Change in Business. Other than the construction and operation of the Mills, engage, directly or indirectly, in a line of business that would be material and substantially different from those lines of business carried on by it as of the Closing Date, except that it may engage in any reasonable extension, development or expansion thereof or in any business ancillary thereto.

(7) No Financial Assistance. Give any Financial Assistance (other than to other Restricted Parties).

(8) No Distributions. Make any Distribution; provided that if no Event of Default or Default has occurred and is continuing at the time such proposed Distribution is to be made or would result from the making of such Distribution, then Distributions may be made provided the aggregate Distributions in any fiscal year of GFP may not exceed an amount determined in accordance with the following:

Ratio of Total Debt as at the last day of the then most recently ended fiscal quarter to EBITDA for the most recently ended four fiscal quarters	Maximum Distribution
Greater than or equal to 4.00:1.00	Nil
Greater than or equal to 3.00:1.00 but less than 4.00:1.00	Cdn. $6,000,000
Greater than or equal to 2.00:1.00 but less than 3.00:1.00	25% of Excess Cash Flow for the most recently completed annual fiscal period of GFP
Less than 2.00:1.00	50% of Excess Cash Flow for the most recently completed annual fiscal period of GFP

(9) No Encumbrances. Create, incur, assume or permit to exist or permit any Restricted Party to create, incur, assume or permit to exist any Encumbrance upon any of its Property (including upon any of the Property of the Footner Joint Venture) except Permitted Encumbrances.

(10) Capital Expenditures. Make, or enter into any agreement which would require it to make, any Capital Expenditures in excess of the Permitted Capital Expenditures.

(11) No Change to Year End. Make any change to its fiscal year end from December 31 in each year.

(12) No Continuance. File articles of continuance in any Canadian jurisdiction after the date hereof.

(13) Hedge Arrangements. Enter into or permit to be outstanding at any time any Hedge Arrangement unless it meets the requirements of paragraphs (a) and (b) below:

(a) such Hedge Arrangement is either (i) a rate swap, interest rate option, forward rate transaction, forward foreign exchange transaction or cross currency rate swap transaction entered into with a lender which is party to the First Lien Credit Agreement or (ii) a Commodity Hedge Arrangement; and

(b) such Hedge Arrangement is designed to protect the Restricted Party against fluctuations in currency exchange rates, interest rates or commodity prices and such Hedge Arrangement has been entered into by the Restricted Party *bona fide* and in good faith in the ordinary course of its business for the purpose of carrying on the same and not for speculative purposes.

(14) Location of Assets in Other Jurisdictions. Except for any Property being delivered to a customer in the ordinary course of business of such Restricted Party as part of the performance of its obligations or the provision of its services to such customer under a contract entered into with such customer in the ordinary course of business of such Restricted Party, and except for Property delivered to or stored in locations for reloading or storing to facilitate the sale and delivery thereof to a customer in the ordinary course of business, move any Property from a jurisdiction in which the Encumbrance of the Security over such Property is perfected to a jurisdiction where such Encumbrance is not perfected or where, after a temporary period allowing for registration in such other jurisdiction, such Encumbrance could become unperfected, or suffer or permit in any other manner any of its Property to not be subject to the Encumbrance of the Security or to be or become located in a jurisdiction in which the Encumbrance of the Security over such Property is not perfected, unless the applicable Restricted Party has first (a) given prior written notice thereof to the Administrative Agent, and (b) executed and delivered to the Administrative Agent all Security and all financing or registration statements in form and substance satisfactory to the Administrative Agent that the Administrative Agent or its counsel, acting reasonably, from time to time deem necessary or advisable to ensure that the Security at all times constitutes a perfected Encumbrance (subject only to Permitted Encumbrances), prior to all other Encumbrances of such Property other than Permitted Encumbrances that are *pari passu* or prior thereto, in such jurisdiction together with such supporting certificates, resolutions, opinions and other documents as the Administrative Agent, acting reasonably, may deem necessary or desirable in connection with such security and registrations.

(15) Non-Arm's Length Transactions. Except with a Restricted Party, enter into any Material Contract or material transaction between non-arm's length parties which is not entered into for fair market value and has not been approved by an independent committee of the board of directors of the Borrower or the Guarantor, as the case may be.

TAB C

This is Exhibit "C" referred to in the
Affidavit of **BENJAMIN MONTGOMERY**
sworn before me, this 14th day of **September, 2009**

A COMMISSIONER FOR TAKING AFFIDAVITS

CONRAD REGO
Barrister & Solicitor
McCarthy Tétrault LLP
1300 - 777 DUNSMUIR STREET
VANCOUVER, B C. V7Y 1K2
DIRECT 604-643-5683

McElcheran, Kevin

Subject: FW: Tax Refund Purchase and Sale Agreement dated as of March 31, 2008 between Grant Forest Products Inc. as vendor and Peter Grant Sr. as purchaser

From: MacLaren, Sandi [mailto:Sandi.MacLaren@FMC-Law.com] **On Behalf Of** Walker, Ross
Sent: Monday, March 31, 2008 4:21 PM
To: Pieterson, Linda; O'Meara, Matthew
Subject: Tax Refund Purchase and Sale Agreement dated as of March 31, 2008 between Grant Forest Products Inc. as vendor and Peter Grant Sr. as purchaser
Importance: High

Linda and Matt:

In accordance with your request, I confirm my view that the transactions contemplated by the above-noted agreement do not contravene the First Lien Credit Agreement dated as of October 26, 2005, as amended, or the Second Lien Credit Agreement dated as of March 21, 2007, assuming that:

1. the tax refunds being sold are being sold for fair market value; and

2. the total amount of the gross proceeds derived from all Dispositions (as defined by each of the Credit Agreements) made by Grant Forest Products Inc. and the other Restricted Parties (as defined by such Credit Agreements) in any single fiscal year of Grant Forest Products Inc. does not in the aggregate exceed US $10 million.

Please confirm that the foregoing also reflects your views.

Thank you.

Ross Walker
Fraser Milner Casgrain LLP
1 First Canadian Place
100 King Street West
Toronto, ON M5X 1B2
Direct Line: 416-863-4743
Fax: 416-863-4592
sandi.maclaren@fmc-law.com

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC. et al.

Court File No. CV-09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AFFIDAVIT OF BENJAMIN MONTGOMERY
(SWORN SEPTEMBER 14, 2009)

McCarthy Tétrault LLP
Suite 5300, P.O. Box 48
Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Kevin P. McElcheran
LSUC#: 22119H
Tel: (416) 601-7730
Fax: (416) 868-0673

Solicitors for the Toronto-Dominion Bank
#654851

TAB # 9.

Court File No. 09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC., and GRANT U.S. HOLDINGS GP (the "Applicants")

REPLY AFFIDAVIT OF PETER J. GRANT SR.
(Sworn September 18, 2009)

I, **Peter J. Grant Sr.**, of the City of Temiskaming Shores, in the Province of Ontario, businessman, **MAKE OATH AND SAY**:

1. I am the Chairman and Chief Executive Officer of the applicant Grant Forest Products Inc. ("GFPI"). As such, I have personal knowledge of the matters to which I hereinafter depose. Where matters are not based on my personal knowledge, I have stated the source of my information and in all such cases verily believe it to be true.

Introduction

2. This affidavit is sworn in reply to the Affidavit of Benjamin Montgomery, a Vice-President and Director of TD Securities, sworn September 14, 2009 (the "Montgomery Affidavit"). I swore an earlier affidavit in this matter on September 8, 2009. I have used the defined terms that were employed in my September 8 affidavit in this affidavit.

3. In this reply affidavit, I have not commented on, or responded to, every statement in the Montgomery Affidavit, but should not be taken as necessarily agreeing with statements upon which I have not commented.

4. I am also obliged to say at the outset that I am not a lawyer and have not commented on the legal interpretation of agreements, or the purported legal effect of steps taken. I do not believe that Mr. Montgomery is a lawyer either, but must observe that he has in several paragraphs of his affidavit purported to interpret agreements. Even as a layman, I can observe that some of Mr. Montgomery's "legal conclusions" are inaccurate or are not "expressly stated" in the agreements to which he refers, despite his contentions. I note, for example, that, among others, the legal conclusions that he purports to draw in paragraphs 9(d), (h) and (i) are not "expressly stated" in the agreement to which he refers, nor are they at all apparent from the agreement.

Reply

5. In response to paragraph 6 of the Montgomery Affidavit, it is not clear to me why the non-core assets are relevant to the issue on this motion, but I am obliged to say that GFPI's decision to embark on the development of those assets was approved by the Board of Directors of GFPI on an unanimous basis, well before the First and Second Lien Credit Agreements, and were therefore fully known to the banking syndicates before they agreed to advance their funds.

6. In relation to paragraph 7 of the Montgomery Affidavit, I used the word "devised" in my first affidavit as a synonym for "developed", and I did not intend to say that there was anything clever or surreptitious vis-à-vis the banks. Indeed, the banks were fully aware of this agreement and, as described below, had input into its development.

7. Mr. Montgomery in paragraphs 8, 9, 13, 14, 23 and 24 of his Affidavit appears to be offering legal conclusions, in the absence of legal training. It is my understanding that that is the role of the Court on this motion.

8. As to paragraph 10 of the Montgomery Affidavit, which states that neither the Lien Agents nor banks were asked to approve or did approve the Agreement, I am informed by Ross Walker, the partner at Fraser Milner Casgrain LLP who drafted the Agreement, and believe, that the Lien Agents or their solicitors reviewed and commented upon drafts of the Agreement and provided specific input on the language of the Agreement. Moreover, the First and Second Lien Agents provided partial discharges in March 2008 and were clearly aware of and content with the Agreement at that time. I have no doubt that the First and Second Lien Agents, and the members of the banking syndicate, were also very content that GFPI would have the full use (commencing in March 2008) of the $20 million purchase price that I paid for the purchase of the Sold 2008 and 2009 Refunds.

9. As to paragraphs 12 and 18 of the Montgomery Affidavit, the statements therein do not appear consistent with, or in the very least give a misleading impression when compared with, what is stated in Mr. Lynch's email of June 19, 2009 which is attached as Exhibit "E" to my September 8 Affidavit.

10. As to paragraphs 19-22 of the Montgomery Affidavit, the term sheet he references was not approved by me, and I never agreed to have GFPI retain the 2009 Sold Refund.

11. In this regard, and in respect of the supposition made by Mr. Montgomery in paragraph 25 of his affidavit that I "must have participated" in the decision not to complete the transfer of the 2009 Sold Refund, I can state unequivocally that I was never asked and never

gave, and would never have given, my consent to the non delivery of the Transfer or of the 2009 Sold Refund.

My Discussions with Independent Directors of the Board of GFPI

12. I have also personally spoken with the independent Directors of GFPI who served at the time the tax refund arrangement was approved by the Board on March 27, 2008.

13. I am informed by Mike Harris, a director of GFPI and the former Premier of Ontario, and believe, that the tax refund arrangement was approved by the directors based on a clear understanding and direction that it was "iron clad" that the tax refunds when received by the Company would be paid over to me. Mr. Harris informs me, and I believe, that it was also his clear understanding that my right to receive the tax refunds stood in front of the banks.

14. I am informed by Jamie Wallace, a director of GFPI, and believe, that in the context of the Board approval of the proposed transaction, his understanding and indeed insistence was that my right to receive the tax refund I was purchasing would rank ahead of any claims of the banking syndicate.

15. I am also informed by William Stinson, a director of GFPI, and believe that Mr. Stinson recalls that Mr. Wallace was very obdurate in insisting that my right to receive the tax refunds should stand ahead of the bank's claims, and that was the basis of Mr. Stinson's approval of the transaction.

16. I am informed by Per Brunes, a director of GFPI, and believe that the directors' approval of the arrangement was accompanied by the direction of the Board that the transaction would only proceed if it was a certainty that I would receive the relevant portions of the tax refunds

when they were received by the Company, in priority to any other claims. The transaction was a means of getting money into the Company to assist it with cash-flow, before the tax refunds were actually received.

17. My own comprehension of what was communicated to and by the Board of Directors in respect of the tax refund arrangement is the same as that of the directors described above, and it was on that basis only that I entered into the transaction.

18. This affidavit is sworn in respect of my motion concerning the Agreement, and for no improper purpose.

SWORN BEFORE ME at the City of Temiskaming Shores, in the Province of Ontario, this 18th day of September, 2009.

A COMMISSIONER FOR OATHS
in and for the Province of Ontario

PETER J. GRANT SR.

Monique Marie Plante, a Commissioner, etc.,
District of Timiskaming
for Grant Forest Products Inc. and its associated companies.
Expires May 7, 2011.

IN THE MATTER OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1986, c. C-36, as amended;
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC. GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP (the "Applicants")

Court File No. 09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF PETER J. GRANT SR.
(Sworn September 18, 2009)

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Richard B. Swan (LSUC No. 32076A)
Telephone: (416) 777-7479
Facsimile: (416) 863-1716

Lawyers for Peter J. Grant Sr.

6

NETWORK
REPORTING & MEDIATION

One First Canadian Place
100 King Street West, Suite 800
Toronto, ON M5X 1E3

Court File No. CV-09-8247-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC., GRANT ALBERTA INC., GRANT FOREST PRODUCTS SALES INC. and GRANT U.S. HOLDINGS GP

--- This is the Cross-Examination of BENJAMIN MONTGOMERY, the Deponent herein, on an Affidavit sworn September 14, 2009, taken at the offices of Network Reporting & Mediation, One First Canadian Place, 100 King Street West, Suite 800, Toronto, Ontario, M5X 1E3, on Friday the 25th day of September, 2009.

APPEARANCES:

RICHARD B. SWAN	]For Peter J. Grant Sr.
MICHAEL BEEFORTH, s-a-l	]
KEVIN P. McELCHERAN	For the Toronto-Dominion Bank

ALSO IN ATTENDANCE:

JANE DIETRICH	Observer
KATHY MAH	Observer

165
8

TABLE OF CONTENTS

PAGE

INDEX OF EXAMINATIONS:

INDEX OF UNDERTAKINGS

PAGE

INDEX OF REFUSALS

(NONE)

INDEX OF UNDER ADVISEMENT QUESTIONS

PAGE

INDEX OF EXHIBITS

--- UPON COMMENCING AT 9:42 AM.

BENJAMIN MONTGOMERY: Affirmed.

MR. SWAN: This is a cross-examination on an Affidavit filed in a motion in a proceeding in the Ontario Superior Court, court file CV-09-8247-00CL in re Grant Forest Products Inc. and related companies.

The cross-examination is a cross-examination on the Affidavit of Benjamin Montgomery which was sworn on the 14th of September 2009 and filed on behalf of the First Lien Credit Agent, I believe, in opposition of the motion of Peter Grant, Sr. in respect of a certain agreement which is described as a Tax Refund Purchase and Sale Agreement from March of 2008.

CROSS-EXAMINATION BY MR. SWAN:

1 Q. Can you state your full name for the record?

A. Benjamin Peter Montgomery.

2 Q. How old are you, Mr. Montgomery?

A. 36.

3 Q. What's your current position?

A. Vice president director TD Securities in the corporate credit group in Vancouver.

4 Q. Can you tell me what your post-secondary education is?

A. Bachelor of Commerce.

5 Q. When did you obtain that?
A. 1999.
6 Q. You're not a lawyer?
A. I am not a lawyer.
7 Q. And you have no legal training?
A. I do not.
8 Q. Can you tell me very briefly what your employment history is post-1999 when you graduated with your B. Com?
A. I've worked in banking since I graduated. All of that time has been spent in credit. First, a few years in commercial banking --
9 Q. With which organization?
A. TD Bank.
10 Q. Have you been with the TD family throughout?
A. I've been with TD just over ten years. I have a few years in commercial, the balance in corporate banking, commercial banking as part of our retail bank. TD Securities is part of our wholesale bank but all of that time spent in credit.
MR. McELCHERAN: It may be easier for the reporter if you speak a little louder and don't put your hand near your face.
THE DEPONENT: Sure.

BY MR. SWAN:

11 Q. Let me just go back a little bit. We have -- among the documents that are potentially relevant to this proceeding is what's been described as the First Lien Credit Agreement which dates from 2005, specifically October 26th, 2005.

And were you involved, in any way involved, with the First Lien Credit Agreement?

A. Yes.

12 Q. What TD entity were you with in October of 2005?

A. TD Securities.

13 Q. So you have since -- at least since 2005 you've been with TD Securities continuously?

A. Yes.

14 Q. And TD Securities Inc.?

A. No.

15 Q. TD Securities?

A. TD Securities is the wholesale banking division of the Toronto Dominion Bank. TD Securities Inc. is a separate --

16 Q. Separate entity?

A. Separate entity, yes.

17 Q. So the TD Securities that you are with is not TDSI; it is a wholesale bank and is a bank under the Bank

Act?

A. I believe it's a trade name of the TD Bank.

18 Q. Oh, it's just a trade name?

A. I believe so. It's referred to as the wholesale banking division in, you know, public, like, reporting and that sort of thing.

19 Q. But it's a division?

A. That's what it's referred to. I can't answer that for sure.

20 Q. It's not a separate legal entity?

A. It's not TD Securities Inc., which is a separate entity.

21 Q. But it's also not a separate entity from the TD Bank; it's part of the TD Bank?

A. Correct.

22 Q. And you are, in fact, an employee of the TD Bank?

A. Yes.

23 Q. Do you have a copy of the First Lien Credit Agreement?

A. Not in front of me.

MR. McELCHERAN: We didn't bring the whole thing. As you know, the Affidavit excerpts some parts of it. But we didn't bring the whole -- if you have the whole --

MR. SWAN: I do. And you have no objection if the whole thing goes in the record?

MR. McELCHERAN: Absolutely not.

THE DEPONENT: Thanks.

BY MR. SWAN:

24 Q. Sir, can you tell me what role you played in respect of what we call the First Lien Credit Agreement from October of 2005?

A. With -- I was directly involved in the negotiation of the Credit Agreement in TD's capacity as a lender under the agreement as well as an agent under the Credit Agreement.

25 Q. And you were involved on behalf of the TD Bank in both capacities both as a lender as part of the syndicate and as an agent?

A. My primary function is as a lender. We have a separate agency group. So my primary involvement was as a lender.

26 Q. Would you turn to page 84 of the document, and I think you'll find that page 84 is replicated three takes because they are counterpart signature pages?

A. Yes.

27 Q. I just want to obtain a little bit clearer understanding of the different roles that both TD and TD entities and you were playing?

A. Sure.

28 Q. You are, and your counsel may wish to answer this question, but as I understand it, you are being proffered as a witness on behalf of the First Lien Agent; is that correct?

MR. McELCHERAN: He is a representative of the TD Bank. He, as he stated in his testimony, was involved in it from the context of the lending part of it but also as part of the agent representative, as a representative of the agent. So he's here in both capacities.

MR. SWAN: But, Mr. McElcheran, you act for the First Lien Agent or do you act for the TD Bank as well as a lender?

MR. McELCHERAN: I act for TD Bank as lender as well.

MR. SWAN: In both capacities?

MR. McELCHERAN: Yes.

BY MR. SWAN:

29 Q. And you're opposing the motion in both capacities?

MR. McELCHERAN: And on behalf of all of the lenders. That is, all of the First Lien Lenders.

BY MR. SWAN:

30 Q. All of the First Lien Lenders. So you represent all of the First Lien Lenders and all of them are opposing?

MR. McELCHERAN: Right.

BY MR. SWAN:

31 Q. Both through the agent and in their individual capacity?

MR. McELCHERAN: Right.

BY MR. SWAN:

32 Q. And looking on page 84, the TD is listed as the Canadian administrative agent, and a Mr. Shiplow has signed the document on behalf of the bank. Do you know who he is?

A. Yes. He works in our agency group.

33 Q. In your Toronto agency group?

A. Correct.

34 Q. You've been in Vancouver continuously since 1999?

A. No.

MR. McELCHERAN: You'll need to say verbal answers.

MR. SWAN: The head shakes don't do it.

THE DEPONENT: Right. Got it.

I've been in Vancouver since 2005.

BY MR. SWAN:

35 Q. So predating this agreement?

A. When this agreement was done, I was in Vancouver.

36 Q. And it looks like you were involved because I see your name listed as a secondary contact for the Canadian revolver?

A. Yes.

37 Q. So you were involved primarily for the TD Bank in its capacity as lender pursuant to the revolver?

A. Correct.

38 Q. And Mr. Shiplow was involved on behalf of TD as administrative agent?

A. Correct, yes.

39 Q. And then another TD entity was involved as U.S. administrative agent?

A. Yes.

40 Q. TD Bank Texas LLC. And the other name that is listed along with yours in terms of the revolver facility is a Frazer Scott. Turn ahead to the third counterpart of page 84.

MR. McELCHERAN: He means the third -- this is copied three times.

THE DEPONENT: Oh, right.

MR. McELCHERAN: And the third one has got this.

THE DEPONENT: Right.

BY MR. SWAN:

41 Q. So who was Frazer Scott?

A. Frazer Scott works with me in Vancouver. He works on the corporate credit side as a -- directly with me.

42 Q. Okay. Is he your boss?

A. We have separate reporting lines. He's more involved on the origination side of the business.

43 Q. On the origination side?

A. On the origination side. But we both work for the same entity.

44 Q. And at this point, back in 2005, was he your boss?

A. No.

45 Q. He was not?

A. No.

46 Q. What was your title in 2005?

A. Vice president.

47 Q. Vice president of what?

A. Corporate credit.

48 Q. And Mr. Scott's?

A. Vice president and director of corporate credit.

49 Q. Vice president and director of corporate credit. So he was, if not your boss, he was at least senior to you?

A. Yes, he was senior to me.
50 Q. And remains so?
A. Yes.
51 Q. And he's still with the bank in Vancouver?
A. Yes.
52 Q. And then the agreement is also signed by Glen Gibson as managing director?
A. Yes.
53 Q. Who was he?
A. He would have, or he is Frazer's boss.
54 Q. So he is the managing director of what?
A. Managing director of TD Securities.
55 Q. TD Securities across the country?
A. Just managing director of TD Securities.
MR. McELCHERAN: What's the significance of the word "managing --"
THE DEPONENT: There's many managing directors within TD Securities.
BY MR. SWAN:
56 Q. And he is --
A. He is the head of credit origination for TD Securities.
57 Q. Head of credit origination for TD Securities?
A. Mm-hmm.

58 Q. All right. And is he still with the bank?
A. Yes, he is.
59 Q. And do you know why it is that you have been put forward as a witness as opposed to Mr. Scott?
A. Mr. Scott is no longer involved with this file.
60 Q. You have continued involvement and he has not?
A. Correct.
61 Q. When did he cease to be involved with the Grant company?
A. I'd say January of this year.
62 Q. And just for the sake of the record so that this is clear, TD, as the what we have described as the First Lien Agent, is authorized, and you might just turn to -- I interrupt that question to turn you back to the beginning of this agreement that lists the parties?
A. Yes.
63 Q. The TD Bank and entities have a number of different roles in respect of this agreement. They were both co- -- TD Securities was a co-lead arranger?
A. Yes.
64 Q. TD was also the book -- TD Securities was also the book manager?
A. Correct.

65 Q. TD Bank was the First Lien Agent, or is the First Lien Agent?

A. Correct.

66 Q. TD Texas is the U.S. Lien Agent?

A. Was.

67 Q. Was? Who is now?

A. Bank of New York.

68 Q. Bank of New York. And the TD Bank is one of the lead lenders as part of the banking syndicate?

A. Correct.

69 Q. And remains so today?

A. Correct.

70 Q. And you told me that when this agreement was drawn up, you participated on behalf of TD, TD Bank, in its capacity as a significant lender?

A. Yes.

71 Q. Have you now taken a role in respect of the TD's capacity as First Lien Agent?

A. No.

72 Q. Someone else has that role?

A. There is a separate agency group.

73 Q. In Toronto here?

A. Yes.

74 Q. That was Mr. Shiplow's group?

A. Mr. Shiplow is a part of that group. There's other people within that group that are also -- I believe Ron Kowpak is the primary agent on this file right now.

75 Q. Ron Kowpak?

MR. McELCHERAN: K-o-w-p-a-k.

THE DEPONENT: Yes. There's a "w" in there.

BY MR. SWAN:

76 Q. All right. So you are not a representative of the First Lien Agent per se?

MR. McELCHERAN: Well, okay, remember that what's going on here is the Toronto-Dominion Bank --

MR. SWAN: Yes. Yes, the Toronto-Dominion Bank.

MR. McELCHERAN: Is the agent.

BY MR. SWAN:

77 Q. Let me put that question differently. You personally haven't had any involvement as a representative of the First Lien Agent. You have been speaking for the TD Bank principally as a lending party as part of the syndicate; that's been your involvement at the very least?

A. I have involvement when -- if TD is for -- I do have involvement when TD makes decisions as an agent.

78 Q. You do have involvement?

A. Yes.

79 Q. And you're consulted?

A. I'm consulted. I do not sign as TD as agent. I would only sign as TD as a lender. So if I was executing this agreement, I would be signing for TD as a lender, not as agent.

80 Q. Okay.

A. But the agency group does -- we do communicate regularly and I would be involved in decisions --

81 Q. Right. And just --

A. -- that TD would make in its agency capacity.

82 Q. Just so we're clear about that, there are no walls between TD as agent and TD as lender; there's a free flow of communication between those parties?

A. Generally. There may be times when walls are necessary, but generally speaking, no.

83 Q. And as far as you know in this case there was no wall established?

A. That's correct.

84 Q. And just so that we have this for the sake of the record, the agent is authorized to speak on behalf of the syndicate, isn't it?

MR. McELCHERAN: Well, that is a legal question. The agency role in this -- the lenders in the CCAA process, because this goes outside the document, in the

CCAA process, it's our position that each of the lenders has a right to appear as a creditor in the process.

So there's agency issues which are directed to the role of the agent within the document, and that's set out within the document, and there's -- otherwise, the lenders are entitled to participate in the CCAA process, to vote and appear in court and do all those things.

MR. SWAN: That wasn't really where I was going, but thank you for that.

BY MR. SWAN:

85 Q. My question for you, Mr. Montgomery, is this, that the purpose for having an agent is to deal with administrative matters and to speak on behalf of the syndicate?

A. I agree the agent is to deal with administrative matters. To speak on behalf of the syndicate, I'm not sure I agree with that.

86 Q. I see. Well, we'll come to this a little bit later, but a discharge was given --

A. Yes.

87 Q. -- in March of 2008, and that was given by the agent on behalf of the syndicate, wasn't it?

A. Correct.

88 Q. And it wasn't necessary for each of the participating members of the syndicate to provide that

discharge?

A. Correct.

89 Q. The agent was authorized to speak on behalf of the syndicate?

MR. McELCHERAN: Well -- okay --

BY MR. SWAN:

90 Q. In that case?

MR. McELCHERAN: The fact is that a discharge was given by the agent. What the agent needed to do in order to be authorized to deliver a specific document is an issue that is a different point.

BY MR. SWAN:

91 Q. Right. But the agent did purport to speak on behalf of the syndicate at that point?

A. Yes.

MR. McELCHERAN: I mean you're -- I don't want to mince words. I just want to make sure that you're clear. Speaking for, articulating, a position, that's different from delivering a document, which is not speaking for; it's delivering a document.

THE DEPONENT: I'm delivering a document on behalf of the lenders.

BY MR. SWAN:

92 Q. Just so that there's no confusion about my question, --

A. Sure.

93 Q. -- in that case, what was required of the First Lien Lenders or what was sought from them was this discharge document; correct?

A. No.

94 Q. No?

A. The first -- all -- there was nothing required of the lenders. The only --

95 Q. Right. That's why I changed my question. It wasn't required but it was provided?

A. By the agent.

96 Q. By the agent. And the agent was providing that on behalf of the syndicate?

A. Yes.

97 Q. Thank you. And the TD -- I don't know that this is particularly pertinent, but just so that we have it clear, the TD Bank was also the Second Lien Agent for a time until May of '09?

A. Yes.

98 Q. And that role has now been taken over by...?

A. Bank of New York.

99 Q. Let's mark the First Lien Credit Agreement as Exhibit 1 to this cross-examination. So Exhibit 1 is what we have described as the First Lien Credit Agreement that bears the date October 26th, 2005?

EXHIBIT NO. 1: First Lien Credit Agreement dated October 26th, 2005.

BY MR. SWAN:

100 Q. When did you, Mr. Montgomery, first hear of or have any involvement with a proposed tax refund purchase arrangement between Grant Forest and Mr. Grant Sr.?

A. March 2008.

101 Q. And can you tell me how that arose? Your involvement, that is.

A. We received a proposal -- not a proposal. I guess we were advised that Grant Forest Products was going to breach it's liquidity covenant, and in order to avoid doing that, the shareholders intended to inject capital in a manner that wouldn't breach the Credit Agreement, and we received a structure from the client and their counsel as to how they intended to do that.

102 Q. Who did you get that from?

A. I don't recall.

103 Q. Do you know who received it at the bank; was it sent to you?

A. I suspect Frazer Scott at the time, and I would suspect it came from Peter Lynch, but I mean I'm not -- I don't know for sure.

104 Q. And did it come from Peter Lynch or did it

come from the company's counsel?

A. I don't know.

105 Q. And your belief is that it was sent to you as a draft agreement or as a structure form of termsheet -- not a termsheet but an outline of structure?

A. I don't recall if it started as a proposed structure or if it started off as here's the draft agreement. I don't recall.

106 Q. And that was sometime in March of 2008?

A. Yes.

107 Q. And you believe that was sent to Frazer Scott?

A. I believe it would have -- I believe, yes, yes, I do.

108 Q. And then how did you get involved in it?

A. Frazer would have brought -- we both managed the file together, so we would have --

109 Q. Let me just stop you there. You're saying he "would have." That suggests to me that would have been the practice but you may not actually remember that?

A. I think the reason I'm saying "would have" is that I don't know for sure that it came from Frazer.

110 Q. I see.

A. For all I know, I got it directly from Peter Lynch, but I don't recall. I think it probably came from

Frazer.

111 Q. So you think that's what happened but you're not certain?

A. Correct. I do know for sure I saw it.

112 Q. So you got it?

A. Yes.

113 Q. And can you produce to me the document that was sent to the bank that you're referring to?

MR. McELCHERAN: We don't have it here.

MR. SWAN: Yes. No, I understand that but --

MR. McELCHERAN: We can produce it.

--- UNDERTAKING

THE DEPONENT: I would suspect it's an email.

MR. SWAN: You'll have to keep your voice up just a bit.

THE DEPONENT: Sure.

MR. McELCHERAN: Counsel, could you help us by showing him one if you have a copy of it?

MR. SWAN: I don't have a copy of it.

MR. McELCHERAN: I'm not surprised at that.

BY MR. SWAN:

114 Q. Well, let me show you a document. There was a structure that was attached to certain minutes of the board of directors meeting of March the 27th, 2008 that's at tab A of Mr. Grant's Affidavit, pages 23 through 26 of

the record.

MR. McELCHERAN: I have that.

BY MR. SWAN:

115 Q. I, of course, have no idea what you got or saw, but I'm showing you this document simply because it is an outline of the structure --

A. Correct.

116 Q. -- to see if that reminds you what you might have received, whether it was an outline or whether it was an agreement. Go ahead.

A. I suspect you may be correct. What I recollect seeing was probably the summary of proposed sale.

117 Q. But you're not certain one way or the other?

A. No.

118 Q. You may have seen the agreement?

MR. McELCHERAN: We'll produce what he did get.

BY MR. SWAN:

119 Q. And what did you do?

A. We talked to lenders' counsel to ensure that it -- what was proposed did not breach the Credit Agreement.

120 Q. When you say "we" talked to lenders counsel, who is "we"?

A. Frazer and I.

121 Q. You and Frazer. You're certain Frazer was involved in that conversation?

A. Yes.

122 Q. And who did you speak to? Did you speak to Linda Pieterson at McCarthys or did you speak to Matt O'Meara?

A. Both Linda and Matt were involved.

123 Q. Because I see their names on an email that you approved?

A. They were both involved in those discussions.

124 Q. And Linda Pieterson is a corporate lawyer, corporate partner, at the McCarthy Tetrault firm in Toronto?

A. Yes.

125 Q. And Matt O'Meara is a lawyer in United States?

A. With Winston Straun.

126 Q. In New York?

A. Yes. No, In Chicago.

127 Q. In Chicago?

A. Yes.

128 Q. So you and Mr. Scott spoke with both of them?

A. Either spoke to or received correspondence from them by email.

What I'm trying to get at is either we spoke to them or we confirmed by email that it didn't breach the Credit Agreement.

129 Q. So you're not sure if you spoke to them. You communicated with them?

A. Communicated with them.

130 Q. Either orally or by email?

A. Correct.

131 Q. And the conclusion of that was that this proposed structure, this proposed transaction, did not breach the First Lien Credit Agreement?

A. And the Second Lien Credit Agreement.

132 Q. Or the Second Lien Credit Agreement?

A. Correct.

133 Q. And do you have an email or other piece of correspondence in which that view is expressed?

A. TD -- in expressing it internally? Or counsel expressing it?

134 Q. Well, either one.

MR. McELCHERAN: Okay. I don't know whether we do or not here. What I will -- of course there's an issue of privilege relating to that and I want to review it to see.

I recognize in this context that in this examination you've asked -- he's given an answer, that he received advice of a specific nature, and so I think it's fair that you get production of that advice, but -- and I think the privilege with respect to that's waived, but there may be other elements of that communication which are not waived.

So what we'll do is I'll undertake to produce that portion of that communication that's in the documentary record that confirms the statement he made and excise any other advice on the basis of privilege.

--- UNDER ADVISEMENT

MR. SWAN: Well, I'll have to see what you give me before I tell you whether I agree with what you've done or not.

MR. McELCHERAN: Fair enough.

BY MR. SWAN:

135 Q. Now, when you were having those discussions with Mr. Scott and with your counsel, you were doing so in your capacity as a lender? When I say "you," let me put that question more precisely since there are so many different related entities here.

When you were having that conversation, you were doing so on behalf of TD Securities, i.e. TD Bank, in your capacity as a lender as part of the lending

syndicate?
A. No.
136 Q. In what capacity were you having that discussion?
A. It would be in the capacity as agent. Because the lenders were not required to consent, so we were working with the agent to ensure that the agent was authorized -- had the ability to execute the document.
137 Q. So in this case, you were, in effect, assisting TD as agent or acting in that capacity?
A. That's fair.
138 Q. And did you have discussions with Mr. Shiplow or anyone else at 77 King Street?
A. I don't specifically recollect but Mr. Shiplow -- and I also don't know if it was Mr. Shiplow or Mr. Kowpak, but whomever signed -- actually, I think it's part of the exhibit here.
MR. McELCHERAN: The witness is ref-- which exhibit are you referring to?
THE DEPONENT: This one here.
BY MR. SWAN:
139 Q. Tab D. Tab D of Mr. Grant's first --
A. So this was signed by Mr. Kowpak and Mr. Murray. Mr. Kowpak was representing TD Bank as agent and

Mr. Murray, TD Texas as agent.

We would have -- either myself or Frazer would have had discussion with them to confirm that it is our view that this transaction as proposed did not breach the Credit Agreement.

Lenders -- the agent, I presume, would have -- when we provide the confirmation from lender's counsel, that would have been what the agent relied on in order to execute it.

140 Q. And, presumably, there would have been some communication between your office in Vancouver and Mr. Kowpak's office in Toronto?

A. Yes.

141 Q. Can you produce that communication or those communications to me?

A. If it was in writing. It may have been by phone.

--- UNDERTAKING

142 Q. And if it -- okay. Thank you. If it's in writing, I'll wait to see them. If it was by phone, the thrust of what -- was it you that would have had the communication or you don't remember?

A. I don't recall. It would have been -- definitely would have been Frazer or I. I suspect Frazer.

143 Q. And the thrust of what would have been communicated was this Tax Refund Agreement is compliant with the two Lien Credit Agreements?

A. Yes.

MR. McELCHERAN: And, Counsel, if it can be of any help, you asked us to produce documents or correspondence for the time periods, and one of the documents that I brought is an email which has got -- which -- one of the people in the chain is Mr. Kowpak, and it's in response to a request for a check into what happened around the $20 million injection, and it includes -- I've given it to you. The email is dated February 10th of 2009 from Mr. Kowpak. So if that's of any help, it has a description of the transaction as an insert.

MR. SWAN: I will come to that in a moment. Thank you.

MR. McELCHERAN: Sure.

BY MR. SWAN:

144 Q. And what communication was there between your office and TD Texas LLC as U.S. agent?

A. I don't recall.

145 Q. Presumably there would have been some?

A. Yes, presumably.

146 Q. If that is in writing, either correspondence

or email, can you produce that to me?

A. Sure.

--- UNDERTAKING

BY MR. SWAN:

147 Q. Mr. Murray is based in New York?

A. Toronto now.

148 Q. At the time though?

A. I believe he was in Toronto at the time as well. There was a time that he was in Texas. I believe he's -- I believe -- I'd have to get back to you to confirm that.

149 Q. All right. In any event -- I don't really need to know that, but he was acting as representative of TD Texas?

A. Yes.

150 Q. And what other members of the syndicate were involved in this discussion? Not that discussion but any of these communications taking place in March of '08?

A. None.

151 Q. And why was that?

A. There was no need to consult lenders provided that it complied with the Credit Agreement.

152 Q. And that was the view you held?

A. Yes.

153 Q. And so, therefore, you didn't consult them?

A. Correct.

154 Q. Now, you've said a couple of times that this discharge wasn't required, this partial discharge, in 2008. Why do you say that? I just want to understand your evidence on that point.

A. Can you --

MR. McELCHERAN: I'm not sure that you're correctly stating what he said.

THE DEPONENT: Can you point me to where I said what you're referring to?

BY MR. SWAN:

155 Q. Well, I'm not referring to anything in the document.

A. Okay.

156 Q. What I'm referring to is in your oral evidence here this morning --

A. Yes.

157 Q. -- you have, I thought, said a couple of times that a partial discharge was not required.

A. Not required for what?

158 Q. I thought that was your evidence?

A. I don't recall saying that.

159 Q. Was a partial discharge required?

A. For what?

160 Q. Well, it was given.

A. Yes.

161 Q. And why was it given?

A. Because we were requested to provide it.

162 Q. But in your view -- I thought you had said in your view, given that this was on-side the credit agreements, it wasn't required, from your perspective?

A. I think it's consent that was not -- lender consent was not required.

163 Q. I see.

A. So we didn't need to canvass -- the lenders did not need to vote on is what is not required.

If it was in breach of the Credit Agreement, then that would be something where you require lender consent.

164 Q. So because -- just so we're clear about that then, because the Tax Refund Purchase and Sale Agreement was compliant and not in breach of either the First or Second Lien Credit Agreement, there was no need to canvass the lending syndicate?

A. Correct.

165 Q. And you say that the partial discharge was given simply because it was requested by the company?

A. Yes. We would not have provided the discharge if not asked to do so.

166 Q. All right. And what communications did you have, you or the bank have, with the company in March of

2008? You told me that you were provided with either an outline of the agreement or the agreement itself.

A. Mm-hmm.

167 Q. What other communications did the bank or entities affiliated with the bank have with GFPI in March of 2008?

A. I don't recall specifically.

168 Q. Were there any?

A. There would have been some discussion. As to what, you know, the form of those discussions and what was communicated, I don't recall specifically.

169 Q. Were any of them in writing?

A. Likely.

170 Q. Would you look for those and produce them to me?

A. Yes.

MR. McELCHERAN: So let's be clear. I want to make sure I write down the undertaking correctly. So the undertaking is to review correspondence with -- who?

MR. SWAN: Between the bank -- and when I say the "bank," let's define --

MR. McELCHERAN: You mean all parts of the bank?

MR. SWAN: All parts of the bank. And representative of Grant Forest Products, and also between solicitors for the bank and solicitors for Grant Forest

Products

MR. McELCHERAN: Okay. Including counsel for each. And during what period?

MR. SWAN: At this point, March of 2008.

MR. McELCHERAN: During March 2008.

MR. SWAN: And I suppose if there is --

MR. McELCHERAN: Obviously relevant to --

BY MR. SWAN:

171 Q. Relevant to the tax refund Purchase and Sale Agreement.

And I say March because the discharge was given in March. If there was a little bit of hang-over correspondence in the first couple of weeks in April, I ask for that as well.

A. I suspect there wasn't.

MR. McELCHERAN: Okay.

--- UNDERTAKING

MR. McELCHERAN: Okay. All right.

BY MR. SWAN:

172 Q. And do you know if your solicitors were involved, the bank's solicitors were involved, in March of 2008 other than the one conversation you had?

A. Involved in what?

173 Q. Involved in respect of this Tax Refund Purchase and Sale Agreement.

A. They were involved to the extent that they confirmed to the agent that there was -- that it was in compliance with the Credit Agreement.

174 Q. And they would have reviewed the agreement?

A. They would -- yes, they would have reviewed the agreement.

They also were relying on -- and I believe counsel for the borrower also confirmed that that was their view.

175 Q. So they reviewed the agreement. And do you know whether they provided input into any language in the agreement?

A. I don't know. I don't believe that they did though.

176 Q. Can you look at Exhibit C to your Affidavit?

A. Yes. Is that the email?

177 Q. Yes. This is the email from Mr. Walker to Ms. Pieterson and Mr. O'Meara?

A. Yes.

178 Q. And I think Mr. McElcheran name is on the top merely because he was the individual who printed the email?

MR. McELCHERAN: Yes, it was sent to me for the purpose of including it in the record.

BY MR. SWAN:

179 Q. So, it appears, looking at your Exhibit C, that Mr. Walker, who was solicitor for the company, GFPI, sent an email to Ms. Pieterson and Mr. O'Meara, who were the solicitors for the bank, TD Bank?

A. For the lending syndicate.

180 Q. For the lending syndicate. And the email says:

"In accordance with your request, Mr. Walker confirms his view that the Tax Refund Agreement does not contravene either of the Lien Credit Agreements." [as read]

Do you know how that request was made?

A. No, I don't.

181 Q. If it was made in writing, could you produce it to me? I suspect it's captured --

MR. McELCHERAN: Yes, it's already captured by the previous undertaking.

BY MR. SWAN:

182 Q. And it includes -- "it" being this email at tab C, Exhibit C to your affidavit -- concludes by saying, Mr. Walker saying, "Please confirm that the foregoing also reflects your views" -- "your" being solicitors to the syndicate. Do you know whether they responded to Mr. Walker?

A. No, I don't.

MR. McELCHERAN: Again, it will be covered by the undertaking so -- if they communicated in writing. But just so we're clear, Counsel, because I'm confused about this line of questioning, there's no doubt that our position is that the agreement -- there's no disagreement about -- with the statement that's made in the Affidavit as far as -- in this email.

MR. SWAN: Thank you.

MR. McELCHERAN: We're not in any way debating whether this complies or doesn't comply. We agree that it does.

BY MR. SWAN:

183 Q. Okay. And that correspondence looks like if there was a response to this, it probably was right at the beginning of April since this was sent the last day in March?

A. That's true.

184 Q. Now, you have brought with you some emails this morning, and one of them is an email from February the 10th, 2009?

A. Yes.

185 Q. That you wrote to Bill O'Connor?

A. Yes.

186 Q. And it's found at the bottom of an email from

Mr. Kowpak to Mr. O'Connor, copied to you?

MR. McELCHERAN: Yes. This is the one.

THE DEPONENT: Yes.

MR. McELCHERAN: It starts off with Kowpak, O'Connor, Montgomery.

THE DEPONENT: Right.

BY MR. SWAN:

187 Q. So you received this email chain?

A. I initiated it.

188 Q. And you ultimately received the email on the top?

MR. McELCHERAN: This one.

THE DEPONENT: The one from Ron, yes. Mr. Kowpak, yes.

BY MR. SWAN:

189 Q. So let's mark then as the next exhibit, I believe it's Exhibit 2, an email chain which has as its last email an email from Mr. Kowpak to Mr. O'Connor copied to Mr. Montgomery and others on February 10, 2009, at 6:45 p.m.

EXHIBIT NO. 2: Email Chain, the Last Email being from Mr. Kowpak to Mr. O'Connor dated February 10, 2009, at 6:45 p.m.

BY MR. SWAN:

190 Q. And let's begin with the email that began

this chain. And we're a little bit out of context or out of time line here because there are some events that happened between March of 2008 and February of 2009, but I refer to this email at this point because it appears to contain a summary prepared by the TD Bank of the Tax Refund Purchase and Sale agreement that appears at page 2 and on to page 3 of the email that we just marked as Exhibit 2; correct?

A. Correct.

191 Q. And focussing on that summary, it looks like that summary has been drawn from or cut and pasted from another document that was prepared in 2008?

A. Yes.

192 Q. Is that correct?

A. That is correct.

193 Q. And what was that other document?

A. It was an internal credit.

MR. McELCHERAN: Okay, internal credit, maybe you have to expand what "internal credit" means.

BY MR. SWAN:

194 Q. What do you mean by that?

A. It's an internal document -- it's a document prepared for internal use that the bank will use to opine on credit -- well, it could just be a general update. So there could be no internal approvals -- it's just the way we used to document credit issues or to make credit decisions or to provide updated material.

195 Q. So it's an internal memorandum that records facts that are relevant to a particular borrowing?

A. Facts and opinions.

196 Q. Facts and opinions that are relevant to a particular loan or a particular credit facility?

A. Yes.

197 Q. And who prepared the -- this internal credit memorandum that we see excerpted here in Exhibit 2?

A. Myself and an associate that works with me.

198 Q. Who was that?

A. Chris Sfikas.

199 Q. That's spelled S-f-i-k-a-s?

A. Yes.

200 Q. He works under you?

A. Yes.

201 Q. And when was that credit memorandum prepared?

A. I don't know the exact date but prior to March 31st. So I would suspect sometime in March.

202 Q. March 31, 2008?

A. Yes.

203 Q. And the context is that you have been provided with the Tax Refund Agreement or an outline of

the agreement?
A. Yes.
204 Q. And then you have provided a summary and opinion in relation to it?
A. Summary and opinion from?
205 Q. From you.
A. I -- well, you were saying I was provided.
206 Q. No. You provided?
A. Yes, I provided a summary and opinion.
207 Q. And is this memorandum addressed to anyone in particular or does it just go in the file?
A. It's not addressed to anybody in particular. It would have gone to our risk management group.
208 Q. In Toronto or Vancouver?
A. Toronto.
209 Q. Would it have been sent to Frazer Scott?
A. No.
210 Q. He didn't see it?
A. He may have seen it but he wouldn't -- it would not have been sent to him.
211 Q. Might he have seen it before it was sent to your risk management group?
A. He may have.
212 Q. Might he have commented on it and edited it?

A. He may have.

213 Q. You don't recall one way or the other in this case?

A. I don't recall.

214 Q. Can you produce to me that original internal credit memorandum?

MR. McELCHERAN: Yes.

--- UNDERTAKING

BY MR. SWAN:

215 Q. And did this credit memorandum play any role in the TD Bank's conclusion that the Tax Refund Agreement was compliant with the First and Second Lien Credit Agreements?

A. No. We relied on counsel for that opinion.

216 Q. So was there a specific purpose for this credit memorandum or was it simply to document the bank's perspective on the matter?

A. It would have been provided just as an update to the file as to what's going on.

217 Q. And when it was sent to your risk management group, why is it sent to them?

A. That's where all of these -- the whole purpose of this is to be keep our risk management group up to date. So any credit memorandum that's produced would ultimately go to our risk management group.

218 Q. Would you have received a response from the risk management group?
A. Yes, I would have.
219 Q. What did they say to you?
A. I don't recall. I'd have to produce it. But it could be anywhere from "noted" to "authorized," depending on what the nature of the -- I don't recall exactly if there was other elements to this credit.
MR. McELCHERAN: We'll produce it and we'll see what it says when we get it.
MR. SWAN: Thank you.
THE DEPONENT: But there would have been some sort of a response.
BY MR. SWAN:
220 Q. And was an affirmative response from them necessary before you in effect signed off on this?
A. No. We just needed a confirmation from lender's counsel that it was in accordance with the agreement -- lender's counsel.
MR. McELCHERAN: In looking at the document, there's no request.
MR. SWAN: We only have an excerpted version.
MR. McELCHERAN: Right. You're absolutely correct. So when we see the whole document, we'll see whether or not there's a request and a response to the

request.

BY MR. SWAN:

221 Q. So looking at your summary, the second bullet point indicates that the capital will be injected in a manner that does not require any consents from the lenders. And were you in effect recording what you had been told by your counsel or was that your own conclusion?

A. A little bit of both. I mean that was -- I agreed with the opinion from our counsel.

222 Q. And in the third bullet point you note that the capital will not be injected as equity?

A. Yes.

223 Q. And that was your perspective at that time?

A. Yes.

224 Q. And remains your perspective today?

A. Can you rephrase that?

225 Q. You haven't changed your mind on that point?

MR. McELCHERAN: Okay, there's a question -- I think the confusion is because there's a subsequent events which is causing confusion in the witness's mind. You're asking about this transaction, whether this transaction was equity?

MR. SWAN: Yes.

BY MR. SWAN:

226 Q. This transaction, the tax refund purchase transaction, was not equity?

A. I never viewed it as equity.

227 Q. And you continue not to view it as an equity injection?

A. Yeah, that's correct.

228 Q. And your understanding now, looking at the fourth bullet point, and specifically item Roman II under the fourth bullet point, your understanding at the time that you prepared this credit memorandum was that the borrower -- that's GFPI; correct?

A. There's other borrowers but that's the primary.

229 Q. The primary borrower being Grant Forest broadly defined?

MR. McELCHERAN: And it is -- that borrower has the returns.

THE DEPONENT: Right.

MR. McELCHERAN: That GFPI's borrower has the tax returns.

THE DEPONENT: Yes. When we refer to the "borrower," it's --

BY MR. SWAN:

230 Q. And the purchaser is Mr. Grant Sr.?

A. Yes.

231 Q. And looking then at the bullet point 4 Roman sub five, at the time you prepared this memorandum, it was your expectation that the purchaser, Mr. Grant, would receive the proceeds of the 2008 tax refunds in late 2008?

A. Yes.

232 Q. And that Mr. Grant would receive the proceeds of the monetized '09 tax refunds in 2009?

A. In 2009 I don't recall if I had a sense of timing.

233 Q. Well, you say late 2009.

A. Okay, then there it is.

234 Q. And you note in the sixth bullet point at the bottom, towards the bottom of the page, that the structured -- you call it the "highly structured nature of this transaction is not so that the shareholders can avoid injecting straight equity." [as read]

That was not the purpose of this structure?

A. Actually, I believe that's a typo.

235 Q. You believe the word "not" should not be there?

A. Yes.

MR. McELCHERAN: The reason for that conclusion is the next sentence is inconsistent with it.

THE DEPONENT: Right.

BY MR. SWAN:

236 Q. And one of the -- while we're on this point, one of the reasons that this was done in two phases was that the $10 million figure, the maximum U.S. $10 million figure, each year was necessary to stay on-side the First Lien Credit Agreement?

A. And the Second Lien.

237 Q. And the Second Lien Agreement. So you couldn't do both transactions, both $10 million tranches, in one calendar year?

A. Correct.

238 Q. And the reason that the second tranche was on January 2nd, the first business day of '09, was simply to have that mechanic of putting it in the second calendar year?

A. Yes.

239 Q. Correct?

A. Yes.

240 Q. And then can you read the last bullet point?

A. "TD as Agent (for both 1st and 2nd lien) will provide the partial discharge of security (refer (ii) above) referred to above..."

241 Q. Carry on.

A. "... the basis of an opinion from lenders' counsel that the structure does not conflict with the credit agreement."

242 Q. And indeed you got that confirmation, didn't you?

A. I assume that we did.

243 Q. And it was your personal view that this structure didn't conflict either of the Lien Credit Agreements. You've already told me that; right?

A. Yes.

244 Q. Now, if you look at paragraph 7 of your Affidavit, you make reference to this language that Mr. Grant had used in his Affidavit, that the Tax Refund Agreement was devised and structured in a particular way?

A. Yes.

245 Q. But just to be clear about this, before March 31, 2008 the bank knew how the agreement -- on or before March 1st, 2008 the bank knew how the agreement was structured, didn't it?

A. It knew how it would. It hadn't been closed at that point. So we knew how it would be structured.

246 Q. In fact, it was closed on March 1, 2008?

A. But we knew how it would be structured, yes.

247 Q. And the bank got a copy of the agreement?

A. We have to -- we will produce -- whether it was a draft or the final form, I don't recall.

248 Q. But you knew what the structure was?

A. Yes.

249 Q. And you don't think that the agreement itself -- I take it you're not asserting that the agreement itself is inconsistent with the structure that you were told about?

A. I'm not, no.

250 Q. And so this reference to the fact that the agreement was devised and structured to comply with the credit agreements, that was something -- the manner in which it was structured was something the bank knew about at the time, wasn't it?

A. Yes.

251 Q. And having reviewed that, came to the view that this was compliant with the credit agreements?

A. Yes.

252 Q. And the bank certainly didn't say to the company, "Do not do this"?

A. We didn't have the ability to say that.

253 Q. Well, whether you had the ability or not, you didn't say it?

A. No.

254 Q. And the bank, as agent, provided discharges on March 31, 2008?

A. Yes.

255 Q. And just looking at those discharges, they're in Mr. Grant Sr.'s Affidavit at tab D. We looked at them earlier. Those discharges specifically reference the Tax Refund Purchase and Sale Agreement as of March 31, 2008 in the "re" line, don't they?

A. Yes.

256 Q. Can you provide me, and I think this is probably captured by the earlier undertaking, but can you provide me with either the email or the letter that enclosed these discharges?

MR. McELCHERAN: I will.

--- UNDERTAKING

MR. SWAN: I think it's probably captured, but no sense in not being specific.

BY MR. SWAN:

257 Q. So looking at paragraph 7 of your Affidavit, the bank, in fact, had no objection to the manner in which this agreement was structured, did it?

A. No, I don't think that's -- we didn't have an opinion one way or another. Our focus was solely that it was in compliance with the credit agreement. We didn't have the ability to object to it, so.

258 Q. Well, you at no point communicated any objection to the company about this agreement?

A. That's true.

259 Q. Now, in paragraph 8 of your Affidavit you refer to an excerpt of certain parts of the Credit Agreement that may be relevant to the issues on this -- on this motion. Was it you that identified these four elements that you thought were relevant or was it somebody else?

A. For which purpose?

260 Q. For the purpose of your Affidavit?

A. It was me.

261 Q. You went through the agreement and identified those four elements?

A. Yes.

262 Q. But you weren't purporting to give a legal opinion or anything like that?

A. No. I was just identifying areas that I think are relevant here.

263 Q. And then in respect of paragraph 9, who identified these elements of the agreement; did you do that or did somebody else?

A. Do which?

264 Q. For the purpose of your Affidavit, who identified these elements at A through I of sub 9; was it

you or was it somebody else?

A. I mean McCarthys was involved in drafting this. I don't recall if --

265 Q. Well, did you say, "I want to refer to these eight or nine elements of the agreements" or did someone else sort of prepare that for you and you looked at it?

A. It certainly was prepared and I looked at it. I had opinion on it as to what should be included. I don't specifically recall which ones, if I specifically said this is missing and I want to include it.

266 Q. Just take a look at paragraph (h), for example, 9(h). It refers to the fact, or it says, that the obligation to deliver the transfer was not secured such that any loss suffered by Mr. Grant was an unsecured claim against GFPI?

A. Correct.

267 Q. You're not purporting to express a legal opinion there, are you?

A. No. This is my interpretation of the agreements.

268 Q. Right. But you're not a lawyer?

A. I am not a lawyer.

269 Q. And it's really for the court to decide what is a secured and unsecured claim, isn't it?

A. Agreed.

MR. SWAN: Why don't we take a five-minute break.
--- Recess taken at 10:44 AM.
--- Upon resuming at 10:53 AM.
BY MR. SWAN:
270 Q. So as of March 31, 2008, the bank was content with this Tax Refund Purchase and Sale Agreement structure?
A. I don't know if that's fair. The bank believed the structure was in compliance with the credit agreement.
271 Q. Right. And presumably the bank was not unhappy that $20 million went into the company as a form of cash flow?
A. I think that the fact that $20 million was necessary to be injected to maintain compliance with covenants was a great concern for the bank.
272 Q. But the fact that it went in as opposed to didn't go in was something that the bank would have been pleased with?
A. Not necessarily.
273 Q. You'd rather that the money hadn't gone in?
A. I think at the time, you know, to be honest, we might have been happier if the loan had simply been repaid rather than, you know, if they were going to default on it.

274 Q. Aside from the loan being repaid, if the options were status quo no $20 million, status quo plus 20 million, you're happier with status quo plus $20 million, presumably?

A. Not necessarily.

275 Q. Not necessarily?

A. If they breach a covenant and they have to come back for waivers, I have the ability -- the lenders may have an option to review pricing, to review other terms of the facility.

276 Q. Anyway, you told me you didn't object to it; right?

MR. McELCHERAN: You didn't object.

BY MR. SWAN:

277 Q. Didn't object?

A. The bank did not object.

278 Q. Right. Let's move forward. In the fall of 2008, the company receives its 2008 tax refund and it pays out approximately U.S. $10 million to Mr. Grant. The bank became aware that?

A. I don't think we were ever advised.

279 Q. But you expected that was going to happen?

A. Yes.

280 Q. And you knew that was the structure?

A. Yes.

281 Q. And then this mechanic of the 2009 closing for January 2, '09 is coming up. And when did the bank, TD Bank, became re-engaged in any issues concerning the Tax Refund Purchase and Sale Agreement?

A. What are you -- can you explain "engaged" I guess.

282 Q. When did you next hear or to your knowledge anyone in the bank next hear of any matter, issue or otherwise concerning the Tax Refund Sale Agreement after March of 2008?

A. When we got the notice from Peter Grant -- when Peter Grant filed the -- what do you call it? This. (Indicating) .

MR. McELCHERAN: The motion.

THE DEPONENT: Yes, when the motion was filed.

BY MR. SWAN:

283 Q. Maybe you're taking my question too literally. Did you have any involvement or any knowledge of any issues involving the tax refund purchase and sale agreement in the latter part of 2008?

A. I think I need you to explain what you mean by "issues."

284 Q. Well, did you do anything in the latter part of 2008 that was in any way connected with this Tax Refund Purchase and Sale Agreement?

anything more limited than that.

A. Okay.

292 Q. When did you next -- after March 31, 2008, when did you next think about --

A. So you're wondering --

293 Q. Let me finish and then you can speak.

A. Sure.

294 Q. When did you next think about or have any involvement with this agreement after March 1, 2008?

A. Okay. So the clarification is helpful because I think it's -- I didn't have any involvement but I did start thinking about it in early February of 2008. Nine, sorry, early February 2009.

295 Q. Nothing before then?

A. I think I started discussing it internally with in my colleagues in February. I may have thought about it prior to that.

296 Q. Were there any communications between the company and the bank in December or January -- December 2008 or January 2009 that were in any way connected with the Tax Refund Purchase and Sale Agreement?

A. Not that I'm aware.

297 Q. Could you look and advise me, and if there were, produce them?

MR. McELCHERAN: Yes.

A. No.

285 Q. And do you know to your knowledge did anyone else in the bank do anything that was in any way connected with this Tax Refund Purchase and Sale Agreement?

A. I'm not aware and I don't believe so.

286 Q. What about any other lenders in the lending syndicate?

A. I couldn't answer that. I'm not aware.

287 Q. So there are some emails that you have given me in the very least in the early part of February, Exhibit 2?

A. Yes.

288 Q. Is an email from you to Bill O'Connor?

A. Right.

289 Q. That -- dated February 10, 2009, that provides Bill O'Connor with a summary of this Tax Refund Purchase and Sale transactions?

A. Yes.

290 Q. So obviously the issue surfaced again and came into your consciousness, didn't it?

A. Yeah, it surfaced internally. So I was taking your question as being was I involved with anything -- yes, we were thinking about it internally.

291 Q. Okay. I didn't intend my question to suggest

--- UNDERTAKING

BY MR. SWAN:

298 Q. And do you know anything about a request for a discharge in late December or early Jan-- late December 2008 or early January 2009?

A. I know from our agent that no request was ever received.

299 Q. Who told you that?

A. Ron Kowpak.

300 Q. When did you learn that?

A. There's an email included in the exhibits here.

301 Q. It may be Exhibit 2.

A. Dated September the 10th where I asked Ron to confirm that.

302 Q. September the 10th?

MR. McELCHERAN: It is the one that's Exhibit 2, I believe.

THE DEPONENT: So this email Ron did confirm, probably September 13th or 14th, somewhere in that area, that he never did receive a request.

BY MR. SWAN:

303 Q. I see. So looking at Exhibit 2, on February 10th, 2009, you asked Mr. O'Connor -- sorry, Mr. O'Connor asked Mr. Kowpak to see if security was discharged, and

Mr. Kowpak writes back to Mr. O'Connor and copies you and says -- this is again in Exhibit 2 -- by email February 10 --

A. Yes.

304 Q. -- 2009 that the only discharge was the one from March of '08 and he hadn't received a request on the '09 to this point?

A. Correct. And he reconfirms that in September. So subsequent to February 10th he had not received such a request.

305 Q. Now, when did Mr. O'Connor become involved in the GFPI matter?

A. January of 2009.

306 Q. And is he in a special department of the bank?

A. He's in the same department that I'm in.

307 Q. Why did he become involved?

A. He has restructuring experience.

308 Q. And how did it come about that you prepared this email to Mr. O'Connor on February 10th? What preceded this email?

A. We were in the process of developing a termsheet that would be used as a means, I guess, for the First Lien Lenders to consider restructuring their credit facilities to enable the company to continue to operate as a going concern.

309 Q. Keep your voice up.

A. Yes.

310 Q. Who made that request of you?

A. When I think of request, I think of an official request. We never received any official request to do that.

311 Q. This is a lower case "R" request?

A. Yes. So we were working with Peter Lynch primarily. That would be the primary.

312 Q. Was Hap Stephen involved? H-a-p S-t-e-p-h-e-n.

MR. McELCHERAN: Yes, it's p-h.

THE DEPONENT: Those would be the two primary people that we were developing the term sheet with.

BY MR. SWAN:

313 Q. When did that process start either informally or formally?

A. So informally talking about it.

314 Q. Yes.

A. January, I would say.

315 Q. Middle January?

A. Probably middle, yes. Early to middle.

As far as putting a termsheet together, I'm going by the date of these emails. I believe the first cuts to the termsheet would have been in early February.

316 Q. Can you look at Exhibit E to Mr. Grant's first Affidavit?

MR. McELCHERAN: Hang on. "E" is...?

MR. SWAN: It's an email from Mr. Lynch.

THE DEPONENT: Yes.

BY MR. SWAN:

317 Q. -- dated June 19th, 2009 and he deep briefly described some facts?

A. Right.

MR. McELCHERAN: Just so you know, Counsel, this is clearly hearsay. It was prepared '09, June of '09. So description here, it's fine to ask him some questions about whether he agrees or doesn't agree with statements here, but in my point of view, without confirmation from another source, I would have said this is hearsay. But let's -- with that qualification, ask away.

MR. SWAN: You can, of course, take whatever position you would like on the motion, and, indeed, we've looked at a number of documents written by other people, haven't we?

MR. McELCHERAN: Yes.

BY MR. SWAN:

318 Q. So, Mr. Lynch says:

"Following the end of the financial quarter in which the 2008 tax rebate transaction was closed, the company and the agent received strong objections to the transaction from two of our lenders who felt that it should not have been proceeded with nor the releases given by the agent without the express consent of the lenders themselves." [as read] ."

Do you know whether that in fact happened?

A. I am not aware.

319 Q. You don't know one way or the other?

A. No.

320 Q. You told me earlier that your perspective was that the consent of the lenders and the syndicate wasn't required; right?

A. In March of 2008 with respect to the 2008 return.

321 Q. Keep your voice up. And he then goes on to say in the next paragraph:

"The issue of executing the transfer of a portion of the 2009 tax rebate to Peter Grant Sr. and the discharge of security was discussed in Q1 2009 by both myself, Mr. Lynch, and our CFO, Eric Davis, with the first and Second Lien Agent. We were advised that the agent would not provide the discharges without the direct authority of the requisite number of First and Second Lien Lenders." [as read]

What do you say about that?

A. I was not involved in those discussions.

322 Q. You had nothing to do with that?

A. No.

323 Q. But I take it you don't have any information to contradict that statement?

A. Correct.

MR. McELCHERAN: Well, the statement is a statement made in June '09 by a person who is not an affiant, not under oath, describing discussion that happened before in January or whenever, some other time in '09. I object to its -- the document itself as being evidence.

Now, whether or not -- and we can take that position on the motion or whatever, but the point is this witness isn't in a position to confirm either one of those statements.

324 Q. You don't know one way or the other?

A. Whether the statement was made?

325 Q. Whether that happened. The statement was made but -- made in this email, but you don't know whether in fact this happened -- you don't know one way or the other whether the agent would not provide the

discharge without the direct authority of the requisite number of First or Second Lien Lenders.

Do you know whether or not that happened?

A. I suspect he's referring to a discussion with Bill O'Connor, but I was not party to those discussions.

326 Q. Do you know about that discussion?

A. Well, no, I don't.

327 Q. Have you been told about that discussion?

A. I do know from Bill that this -- that this would have been our position.

328 Q. What did Bill tell you in this regard?

A. That as -- you know, in order to -- in order to continue to support the company and, you know, put a structure in place that would allow it to continue to operate, that the lenders would look for the 10 million to remain in the company --

329 Q. Okay.

A. -- in order to induce the lenders to continue to fund, or to continue to forebear, I guess, or continue to re -- to restructure the credit facilities to allow it to continue to operate.

330 Q. But the sentence that we just referred to says, "We were advised that the agent" --

A. Right.

331 Q. -- "would not provide" -- and the agent at

that time, both agents, was the TD Bank?

A. Yes.

332 Q. The agent would not provide discharges without the requisite direct -- the direct authority of the requisite number of first and Second Lien Lenders. Did Mr. O'Connor tell you anything about that?

A. No.

333 Q. So you don't know whether that's accurate one way or the other?

A. I think it's fair that Bill may have told him that that's TD's position. Whether the agent specifically said that, I don't -- I have no idea.

334 Q. Okay. Well, the agent was TD?

A. Yes. Sorry, I -- when I -- I typically think of the agent itself as Mr. Kowpak, or his group.

335 Q. And you haven't spoken to Mr. Kowpak about what he said in this specific context?

A. Well, other than that he'd never received a request to release.

336 Q. Right. But about this specific issue about not providing discharges without the requisite number of First and Second Lien Lenders?

A. I haven't spoken to him about that.

337 Q. And indeed your view that you told me earlier in the context of the March 2008 events was that the

consent of any number of members of the syndicate wasn't required; they weren't entitled to a vote?

A. Yes.

338 Q. And this document then goes on to say: "TD Bank also indicated that in its position as one of the First Lien Lenders it would not be supportive of the request"? [as read]

A. Right.

339 Q. Now that's something that you probably do know about?

A. That's something the bank certainly -- TD, as a lender, in the -- in putting together a termsheet, I guess, or a set of terms, that the banks may consider amending their facilities to continue to allow the company to operate, you know, that the 10 million was important, the company needed it from a liquidity perspective, and TD as a lender, you know, in order to extend our term and to relax covenants, that is certainly one of the things we would have looked for to -- would have looked for the 2009 tax refunds to remain in the company in order to execute on the proposed termsheet.

340 Q. So, in effect, the bank was saying to the company, "Don't pay him the money"?

A. Well, the company was showing us that they needed the money from a liquidity perspective and in their forecasts and budgets and in the termsheets we provided them, that was one of the terms that was -- keeping the 2009 tax refunds in the company was a covenant within the proposed terms and...

341 Q. In effect, I think you say in your Affidavit that the bank required the company to keep --

A. Yes.

342 Q. -- the $10 million?

A. That was an express term in the -- or that was a covenant in the draft termsheet.

343 Q. That was something the bank required the company to do?

A. In the context of a restructuring.

344 Q. And --

A. So this is not in context as -- this is in context if we go out and amend the credit facilities, this is something that we look for to happen.

345 Q. But this sentence is a little bit different. It says TD Bank also indicated that in its position as one of the First Lien Lenders, it would not be supportive of the request?

A. Yes.

346 Q. So the TD did not support the request that the discharge be given?

A. I don't recall ever getting a request for a discharge. In fact, I know from the agent we never did.

MR. McELCHERAN: I think -- I've given you a lot of liberty in cross-examining him about somebody else's hearsay statement, but you've got as far as I think you can on that.

MR. SWAN: Well, I'm just using this as a point of reference. I'm really interested in what his evidence is.

THE DEPONENT: Yes.

BY MR. SWAN:

347 Q. And that is the bank wanted the 10 million bucks to stay in the company?

A. In the context of a restructuring, yes.

348 Q. What about not in the context of a restructuring?

A. I don't think that matters one way or another. You know not in the context of restructuring, there's contracts in place that we, you know -- we weren't talking -- we were talking -- the discussion at the time was with respect to a termsheet. It wasn't with respect to a request to release security on the 2009 taxes.

349 Q. Well, and in fact the bank wasn't in a position to -- or was it in a position to compel the

company to retain the money?

A. We were in a position to compel them to the extent that in order to entice lenders to restructure the credit facilities we thought it would be in their best interests to keep it in company and, in fact, that is what they were showing in their budgets as was needed.

350 Q. And that is ultimately what you required in the straw man termsheet?

A. Yes, there was a covenant in the termsheet.

351 Q. I think this is already covered by a prior request. I asked you for correspondence and emails in December '08, January '09, but I'd like to see whether there are any communications in respect of the bank's position on providing a discharge in respect of the '09 refund?

MR. McELCHERAN: Well, the -- yes, we'll give you the undertaking. I just want to be clear about it. The communications regarding -- from the bank?

MR. SWAN: Well, exchange between the two of them, bank and company or bank's solicitors and company.

MR. McELCHERAN: Regarding a request for a discharge?

MR. SWAN: Yes. Well, in which the bank's position.

(REPORTER'S NOTE: Telephone rings.)
MR. SWAN: Go ahead.
--- Discussion off the record.
MR. McELCHERAN: So the communications between TD and --
MR. SWAN: Company.
MR. McELCHERAN: Company, GFPI, or counsel --
MR. SWAN: Or counsel.
MR. McELCHERAN: Requesting or --
MR. SWAN: Not requesting?
MR. McELCHERAN: Not requesting --
MR. SWAN: But dealing with.
MR. McELCHERAN: Dealing with --
MR. SWAN: Either partial discharge transfer document or the bank's position on whether it wanted the monies, the $10 million, retained by the company.
MR. McELCHERAN: Okay. Well, we have given you stuff about the termsheet which says that.
MR. SWAN: Yes.
MR. McELCHERAN: So bank's position... And of course we're talking about refunds that still haven't been received; right?
MR. SWAN: Yes.
--- UNDERTAKING
BY MR. SWAN:

352 Q. So you had told me earlier, Mr. Montgomery, that there were informal discussions in -- starting at some point in January of 2009 that Mr. Lynch might have been involved in, that Mr. Stephen might have been involved in. Do you recall being part of any of those discussions?

A. Yes.

353 Q. And was the tax refund discussed in any of those January '09 discussions?

A. No.

354 Q. It was not?

A. No.

355 Q. How did it arise internally at the bank?

A. I was preparing the draft termsheet.

356 Q. Yes?

A. I thought about the issue and -- I thought about the issue, I put in a negative covenant that it remain in there, and we provided that termsheet. Bill and I were preparing that termsheet. That termsheet was provided to Hap Stephen and Peter Lynch.

After the term sheet was provided, I don't recall ever having any discussion on it.

357 Q. Now, looking at Exhibit 2 again, Exhibit 2 doesn't reference a termsheet. So does this email of February 10 --

A. Yes.

358 Q. Does that predate your preparation of a draft termsheet?

A. No. This would have been -- at the time I was preparing the termsheets, Bill had not been involved in -- had no knowledge of the issue.

359 Q. "The issue" being the tax refunds?

A. "The issue" being the tax refunds. So to give him some background, I sent him this email to give him some insight as to why I was putting that negative covenant into the termsheet.

360 Q. Now, you say in this email, "I didn't --" I'm looking at the one that was sent at 4:22 p.m. on February 10, 2009?

A. Yes.

361 Q. You say in the email: "I didn't bring it up on the call because not sure if Hap knows about it." [as read]

What does that mean?

A. I wasn't aware of whether Hap was aware of this structure or -- it had never been discussed before.

362 Q. The tax refunds?

A. The tax refunds had never been discussed in any discussions, so I didn't -- this is mentioned in the context that we didn't talk about it on the call but I was going to put it in the termsheet.

363 Q. And what was the call?

A. There were several calls, I guess, to discuss terms on which the lenders may look to -- or that TD, anyway, may be supportive of amending the credit facilities, and then take that out to the other lenders as a basis for which everybody would --

364 Q. So why didn't you want to bring up this tax refund issue about Hap Stephen?

A. I didn't know if he knew anything about it.

365 Q. So what?

A. The context was I was just going to stick it in the termsheet and see how they reacted.

366 Q. Why? Why did you decide to do that?

A. I wasn't sure if it was an issue or not. We'd find out if it was an issue after we gave them the termsheet and it never was discussed after that.

367 Q. And you say: "If we restructure, we would want to make sure that the shareholders do not take this payment -- take payment on this deposit"? [as read]

A. Right.

368 Q. Was that your -- did you instigate that thought?

A. Yes.

369 Q. That was your decision?
A. Yes.
370 Q. And prior to writing it in this email, had you discussed it with Mr. O'Connor or Mr. Scott?
A. Mr. Scott was not involved with the file at this time. Just Mr. O'Connor.
I had talked about it with Bill probably just prior to sending him this email, told him of the issue.
The point of this email was to give him some background on the structure.
371 Q. Well, you gave him some background on the structure but you also made a clear suggestion, proposals?
A. Yes.
372 Q. Two things: You didn't want to raise it with Hap Stephen because you thought it would be better to deal with this just by putting it in the termsheet; right?
A. Right.
373 Q. And, two, you wanted to communicate to Bill O'Connor that in your view --
A. Yes.
374 Q. -- the bank should insist that this stay in the company, this 10 million bucks?
A. In the context of a restructuring, yes.

375 Q. And if you would look at another document that you provided for me --

A. Yes.

376 Q. -- the substantive part of which is a February 12, 2009 email from Bill O'Connor --

A. Yes.

377 Q. -- to Glen Gibson and Adam Newman?

A. Yes.

378 Q. And you received a copy as well?

A. Yes. Okay.

MR. McELCHERAN: This is the February 12, '09?

MR. SWAN: February 12, '09.

BY MR. SWAN:

379 Q. February 12, '09, 2:25 p.m. from Mr. O'Connor to others.

And Mr. Newman and Mr. Gibson are?

A. So Mr. Gibson, we've already talked about his role. He's a managing director at TD Securities and he's head of credit origination.

Mr. Newman is also a managing director of TD Securities and he heads credit management. Both credit origination and credit management are subsets of corporate credit.

380 Q. And who is Grant Wice, W-i-c-e?

A. Grant Wice is managing director at TD

Securities. At the time he was -- he was who I would be reporting to at the time.

381 Q. And the context of this is an outline of a structure leading to a termsheet?

A. Yes.

382 Q. And on the third page I see that there is a reference to the tax refunds, although it says 20 million instead of 10 million?

A. Right.

383 Q. Is there any other reference to that tax-refund issue in here? I didn't see one but perhaps you can have a look.

A. Do you want me to look right now?

384 Q. Yes, please.

A. Sure. That is the only reference I see to it, to the tax refunds.

385 Q. Let's mark that email chain -- really, it's just one email, in effect, as Exhibit 3. It's the email of February 12, 2009 at 2:25 p.m. from Mr. O'Connor.

EXHIBIT NO. 3: Email dated February 12, 2009 at 2:25 p.m. from Mr. O'Connor.

BY MR. SWAN:

386 Q. All right. Moving from February 12, you've provided another email from Mr. O'Connor, this time to Hap Stephen at Stonecrest Capital, and you received a

copy of this dated February 20, 2009.

Mr. McElcheran, are we getting into a level of detail that this is a document that you would prefer to request be sealed?

MR. McELCHERAN: Let me just see -- because I haven't located -- February 20, okay, got it.

Okay, so February 20 attaches the draft termsheet.

THE DEPONENT: I think this would -- the prior email would also fall into that category, too.

MR. McELCHERAN: Exhibit 3 as well.

MR. SWAN: Okay.

MR. McELCHERAN: Okay. So the -- just to state it on the record, counsel have discussed this point. We had specifically not included the termsheet, which -- and discussions around the restructuring because of the potential effect it might have on ongoing marketing activities that the company is going through as being potentially prejudicial, and that we will be seeking an order sealing Exhibits 3 -- any exhibits which relate to that, to the termsheet, and the terms of the termsheet.

MR. SWAN: And just so that I -- I don't have any instructions on any of this, so I'm hearing what you're saying and I'll go away and do something reasonable.

MR. McELCHERAN: Yes. Well, on that basis we have brought them for production.

BY MR. SWAN:

387 Q. And is the document attached to the February 20, '09 email really the first draft of a new termsheet?

A. I'd have to check my email to know for sure. I suspect it is -- the first draft provided to the company.

388 Q. All right. Let's mark that then as Exhibit 4. Exhibit 4 is an email. The substantive part of it is an email from Bill O'Connor dated February 20, 2009, at 10:43 a.m.

EXHIBIT NO. 4: Email from Bill O'Connor dated February 20, 2009, at 10:43 a.m.

BY MR. SWAN:

389 Q. And did you have discussions with other members of the lending syndicate about this termsheet?

A. Not this particular draft but a final version of the termsheet.

390 Q. And did you have discussions with other members of the lending syndicate with respect to the treatment of the 2009 tax refund?

A. No.

391 Q. You had no discussions with them?

A. It was never raised as an issue.

392 Q. By any of the lenders?

A. Not -- a termsheet -- a termsheet that was substantially similar to this was eventually provided to the other lenders. That termsheet was discussed but the tax -- I don't recall the taxes being specifically discussed.

393 Q. The tax refund?

A. Right. The covenants in the termsheet that addressed the taxes.

394 Q. All right. I don't want to clutter up the record with all kinds of unnecessary paper. If there is any communications or correspondence with the other lenders in which there is reference made to the Tax Refund Agreement or the tax refund in the context of the termsheet discussions, I'd like to see those.

A. So that would consist of a notice from the -- it would have been that the term sheet provided, but we can provide the final term sheet that was provided. I think I'm fairly confident that that would be the only reference or the only reference to the taxes and anything provided to lenders.

MR. McELCHERAN: You need to speak louder.

For the purpose of the undertaking, just so we're clear, from the -- there is, in fact -- and the client probably knows this, there's a -- maybe not -- there's an interlink site where this document is posted. So that we can -- we'll certainly produce the note that advised lenders of that posting and any other correspondence in relation to the termsheet from the other lenders specifically in relation to this point.

If it doesn't relate to this point, we won't do so.

--- UNDERTAKING

BY MR. SWAN:

395 Q. You don't recall any discussion?

A. I don't recall any discussion.

396 Q. Or communication?

A. Or communication.

397 Q. All right. And I would ask you to produce to me the final termsheet?

MR. McELCHERAN: It's attached to an email that's included in this group.

THE DEPONENT: Now, what we have here -- we can produce it as an attachment to this email.

BY MR. SWAN:

398 Q. Which one is that?

MR. McELCHERAN: This is the one that's dated -- there's an exchange between Peter Lynch and Bill O'Connor that takes place on March 16th, and the attachment is not included with the email that I have here, which is the --

which is the difficulty I'm having at the moment.

THE DEPONENT: But I can dig it up.

MR. McELCHERAN: But we'll undertake to produce it.

--- UNDERTAKING

MR. McELCHERAN: So I think I gave you the email dated March 16th, '09?

MR. SWAN: Yes, I do have an attachment to the one that -- to that email.

MR. McELCHERAN: Maybe I'm --

MR. SWAN: But it doesn't have the look of a final document because it includes all of the --

MR. McELCHERAN: All the marking on the left.

MR. SWAN: Black line or the red line.

THE DEPONENT: We can produce the one that was put on Interlink; so that would -- we'll be able to get that to you.

BY MR. SWAN:

399 Q. Can you have a look at this copy though? I presume that it's close to a final one for the purpose of asking a couple of questions?

A. Yes.

400 Q. So in respect of the termsheet -- and this was ultimately signed, this termsheet?

A. I don't recall if it was signed. It was agreed to by Peter Lynch. I don't believe he signed it.

MR. McELCHERAN: The term sheet doesn't provide for a signature.

BY MR. SWAN:

401 Q. It was agreed to though?

A. Yes.

402 Q. On behalf of the bank?

A. Sorry?

403 Q. On behalf of the bank it was agreed to as well?

A. It's just a draft summary of terms and conditions. There's nothing --

404 Q. But it was one that the bank was prepared to proceed upon?

A. Subject to credit approval.

405 Q. And under the negative covenants in this copy, covenant 9 is a prohibition on repayment of the U.S. $10 million deposit against the sale of any portion of the 2009 tax refund.

So to put that in every-day language --

A. Yes.

406 Q. -- the bank was requiring -- I think you say this in your Affidavit -- the bank was requiring that the company not transfer that tax refund to Mr. Grant?

A. Again, this term sheet was not subject to

credit approval. So the bank was not requiring anything.
We were signalling that if we were to agree to amend our credit facilities, that this is something that TD, as a lender, would look for.

407 Q. You weren't just signalling it. You were saying you required it?

A. We required, yes, we required that in connection with a restructuring of the credit facilities. But we were not credit-approved yet on this.

408 Q. And were you ultimately credit-approved?

A. It never got that far because the syndicate -- once it was posted to Interlinks, it didn't really get too far with the syndicate.

409 Q. The syndicate said no?

A. No, they never said yes or no. It's just other events unfolded that ultimately led to the filing.
But the broad restructuring of the credit facilities that this term sheet contemplated, we never got too far on that other than this termsheet.

410 Q. Can you look at your Affidavit for a moment?

A. Sure.

411 Q. Paragraph 13 and 14, just take a moment to read that.
You're not intending to express a legal opinion

there, are you?

A. No. This is my own opinion.

412 Q. I may have covered this off, but I'd like to ensure that I have any correspondence between the TD Bank either in its capacity as agent or in its capacity as lender and any other members of the lending syndicate in respect of the Tax Refund Agreement or the tax refund, whether in the context of the termsheet or otherwise?

MR. McELCHERAN: Okay. Well, that's -- can you give me your parameters on time? Because it's going -- looking at every file is -- it's over a two-year period.

MR. SWAN: Let's say from November '08 to the present.

MR. McELCHERAN: November '08 to present. Okay.

--- UNDERTAKING

MR. McELCHERAN: I'm going to make an exception to that. I think the present is too long because it includes the time privilege period while the litigation is going on up to the time of your motion being served.

MR. SWAN: That's fine. Well, or if there are -- I see what you're saying, there may be litigation privilege.

MR. McELCHERAN: Right.

MR. SWAN: Up to the time the motion is served.

BY MR. SWAN:

413 Q. You were obviously watching GFPI's financial position through to this period?

A. Yes.

414 Q. And one of the factors that impacted on the company was a significant downturn in the U.S. housing market, wasn't it?

A. That's correct.

415 Q. And the Canadian housing market?

A. To a lesser degree, yes.

416 Q. But significantly a significant downturn in the U.S. housing market had a serious impact on the company's fortunes, didn't it?

A. Well, I think three things did. One was the downturn in the housing market. The other was the -- there was major cost overruns on the mills being constructed. And the third thing was, in hindsight, was our borrower was financing, you know, what we've come to call the non-core assets.

417 Q. Well, the non-core assets were approved and under way at the time the First Lien Agreement was signed; right?

A. We weren't aware of their existence until early this year.

418 Q. You weren't aware of their existence. Did

you not --

A. Sorry. We weren't aware that our borrower was paying for them.

419 Q. Did you not do due diligence before you undertook the loan?

A. We did.

420 Q. In any event, the downturn in the U.S. housing market was a significant factor, wasn't it?

A. It was.

421 Q. Is there some reason you don't mention that in your Affidavit?

A. I think that's already mentioned in the Affidavit from Mr. Grant. And I don't deny that the downturn in the housing market was a major contributor; my point is that it was not the only contributor.

422 Q. It was "the" major contributor, wasn't it?

A. No. It was "a" major contributor, not "the" only.

423 Q. Not the only. "The" major contributor. "The" most significant factor?

A. No, not necessarily. If there hadn't been cost overruns on the mills and our borrower had not paid for the non-core assets, I'm not sure that they would have filed. They may have had sufficient liquidity to continue operating.

424 Q. You haven't done that calculation, have you?

A. It's pretty subjective.

425 Q. You haven't done it, have you?

A. I have not done it, no.

426 Q. You make reference in your Affidavit to a "straw man termsheet," and you might just tell us so the court knows what a "straw man" termsheet is?

A. Sure. It was a termsheet that the company provided to Goldman Sachs as a set of terms and conditions that potential -- Goldman Sachs was mandated to raise equity or capital, and in order to entice an investor to put capital into the business, they would have needed existing lenders to consent to a set of amendments.

And this was -- the straw man termsheet is effectively a summary of terms and conditions that they should think -- you know, that might be a good indication of where the First Lien Lenders might look to do in order to agree to amendments to the credit agreement.

427 Q. Looking again at your Affidavit page 7, paragraph 23, you refer to Mr. Grant expressly obtaining no, legal or beneficial interest in the refund. Again, you're not meaning to express a legal opinion, are you?

A. Correct. That's my own opinion.

252
95

428 Q. And you're not a lawyer?
A. I am not a lawyer.
429 Q. And you have no legal training?
A. I have no legal training.
430 Q. And the same is true in respect to paragraph 24, isn't it?
A. That's correct. This is based on my own interpretation of the credit agreements and related documentation.
431 Q. In paragraph 25, you say:
"The fact that no transfer was delivered was not inadvertent or accidental. It was deliberate and a necessary step to preserve cash as the business struggled with tight liquidity." [as read]
A. Mm-hmm.
432 Q. You use "deliberate" to refer to whose actions there?
A. The company's.
433 Q. And you say it was a necessary step. Did you think it was a necessary step?
A. Yes.
434 Q. You then say --
A. I also believe the company thought it was a necessary step.
435 Q. Did you ask them?

A. No.

436 Q. That's just your own speculation?

A. Yes.

437 Q. And you say: "Mr. Grant as the CEO and a member of the board must have participated in a decision not to complete the transfer"? [as read] ?

I take it you've never been to a GFPI board meeting?

A. I have not.

438 Q. And you were not present when Mr. Grant had any involvement in any such decision?

A. No, I was not.

439 Q. And this is pure speculation on your part, isn't it?

A. Yes.

440 Q. And Mr. Grant in his Affidavit says that he did not participate and consent to such a decision, and you have nothing to suggest otherwise, do you?

A. No.

MR. SWAN: Those are all of my questions, subject to the fulfillment to the undertakings.

MR. McELCHERAN: I have only one tidy-up thing. I'm not sure that we marked the termsheet that was referred to in testimony.

MR. SWAN: Why don't we do that then.

MR. McELCHERAN: And I don't have any questions.

MR. SWAN: So while we're still on the record, just to facilitate this, I have no idea how much material you're going to produce. I ask you to produce it as quickly as you can.

MR. McELCHERAN: Yes.

MR. SWAN: It may not be necessary to put everything in the record.

MR. McELCHERAN: Agreed.

MR. SWAN: So why don't we deal with that when we see what is there.

MR. McELCHERAN: Okay. What I'm going to do -- fair enough. And we'll do that between counsel, select what will -- on the basis that I've done my -- you know, I think that there has to be an agreement, I think, about what goes in and what doesn't go in.

You've asked us for productions to produce, and I think at that point I think relevance should be the determination, rather than whether we like it or don't like it. But that's a discussion we can have later.

What I'm going to do with the termsheet for the moment, because this particular is mentioned in the transcript, I just want -- the one we're showing here has got some markings on the side of it. It appears not to be the final draft. So I'll mark it Exhibit A and what we'll do is part of our productions will include the one that was attached to that email.

EXHIBIT A: Termsheet with Markings on Side.

MR. SWAN: I guess the one other thing I should raise is, as I haven't seen what you're going to produce, it's possible that you might produce a document that requires a question, a follow-up question.

MR. McELCHERAN: Yes.

MR. SWAN: Hopefully we could do that in writing. Another alternative is by teleconference or video conference, if we need to.

You'll be in Vancouver next week?

MR. MONTGOMERY: Yes.

MR. SWAN: So let's just leave it at that.

Thank you.

MR. McELCHERAN: That's acceptable to me as well.

--- WHEREUPON THE EXAMINATION ADJOURNED AT 12:00 NOON.

I HEREBY CERTIFY THE FOREGOING
to be a true and accurate
transcription of my shorthand notes
taken to the best of my skill and ability.

Asper: Kathrine McMenemy

KATHRINE MCMENEMY, CSR
Computer-Aided Transcription

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF GRANT FOREST PRODUCTS INC. et al.

Court File No. M38119

COURT OF APPEAL FOR ONTARIO

MOTION RECORD

(Motion for leave to appeal the Order of Newbould J. dated October 13, 2009)

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Geoff R. Hall LSUC# 34701O
Tel. 416 601-7856
Fax: 416 868-0673

Lawyers for The Toronto-Dominion Bank

#776991